Supreme Court, U.S.
FILED
FEB 25 2013
OFFICE OF THE CLERK

No. 12-10

In the Supreme Court of the United States

AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL.,
PETITIONERS

v.

ALLIANCE FOR OPEN SOCIETY
INTERNATIONAL, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: JULY 2, 2012
CERTIORARI GRANTED: JAN. 11, 2013

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 08-4917-cv

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., PATHFINDER INTERNATIONAL, GLOBAL HEALTH COUNCIL, INTERACTION, PLAINTIFFS-APPELLEES

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
10/6/08	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL , Copy of notice of appeal and district court docket entries on behalf of APPELLANT United States Agency for Inter–national Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, filed. [Entry date Oct 8 2008] [LR]
10/6/08	Copy of district court order dated 8/7/08 RECEIVED. [Entry date Oct 8 2008] [LR]

DATE	PROCEEDINGS
10/6/08	Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date Oct 8 2008] [LR]
10/7/08	1 St. supplemental index in lieu of supplemental record filed. [Entry date Oct 8 2008] [LR]
10/16/08	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, Form C filed, with proof of service. [Entry date Oct 20 2008] [LR]
10/16/08	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, Form D filed, with proof of service. [Entry date Oct 20 2008] [LR]
10/20/08	Letter from Atty. Rebekah Diller on behalf of Plaintiffs-Appellees Alliance for Open Society Internationals, Inc, et.al., stating, "After supplementary letter briefing regarding the new guidelines, the panel issued a Summary Order dated Nov. 8, 2007 that the preliminary injunction in place and remanded the case to the District Court for further proceedings. The Summary Order provided that upon restoration of jurisdiction to the Second Circuit, the matter would be returned to the same panel.", received [Entry date Oct 27 2008] [LR]

DATE	PROCEEDINGS
10/20/08	Notice of appeal acknowledgment letter from Rebekah Diller received. [Entry date Oct 27 2008] [LR]
10/24/08	Pre-Argument Conference Notice and Order from Vidya Kurella, Scheduled For: Friday November 14, 2008 @ 11:30 am, Filed. [Entry date Oct 27 2008] [LR]
10/24/08	Scheduling order # 1 filed. Appellants brief due 12/5/2008. Appellees brief due 1/5/2009. Ready week 3/2/2009. [Entry date Oct 27 2008] [LR]
10/29/08	The new case manager assigned to this case is: Munoz, Elizabeth. [Entry date Oct 29 2008] [EM]
10/29/08	Notice to all parties of the change in case manager. [Entry date Oct 29 2008] [EM]
12/5/08	Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant Michael Leavitt, et al motion extended time to file briefs filed with proof of service. [Entry date Dec 8 2008] [EM]
12/12/08	Notice to all parties of the order filed. [Entry date Dec 12 2008] [EM]

DATE	PROCEEDINGS
12/12/08	Order FILED GRANTING motion extended time by Appellant Michael Leavitt, Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant United States Department of Health and Human Services, Appellant United States Centers of Disease Control and Prevention, Appellant Henrietta Fore, endorsed on motion dated 12/5/2008 Extended Appellants brief due is 1/30/2009. Extended Appellees brief due is 3/2/2009. Extended Ready week is 4/13/2009. [Entry date Dec 12 2008] [EM]
1/15/09	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, brief FILED with proof of service. [Entry date Jan 19 2009] [EM]
1/15/09	Volume 1 for APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, 2 volume joint appendix filed. w/pfs. [Entry date Jan 19 2009] [EM]

DATE	PROCEEDINGS
1/15/09	Volume 2 of APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, 2 volume joint appendix filed w/pfs. [Entry date Jan 19 2009] [EM]
1/15/09	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, special appendix filed(w/pfs) [Entry date Jan 19 2009] [EM]
2/17/09	Appellee Alliance for Open Society International, Inc., Appellee Open Society Institute, Appellee Pathfinder International, et al motion extended time to file briefs filed with proof of service. [Entry date Feb 18 2009] [EM]
2/26/09	Notice to all parties of the order filed. [Entry date Feb 26 2009] [EM]

DATE	PROCEEDINGS
2/26/09	Order FILED GRANTING motion extended time by Appellee Open Society Institute, Appellee Alliance for Open Society International, Inc., Appellee Pathfinder International, Appellee Global Health Council, endorsed on motion dated 2/17/2009, it is hereby ordered that the motion for an extension of time to file Appellee's brief to 5/4/09 is granted. The appeal shall be heard no earlier than the week of 6/22/09 filed. (RKW, C.J.J.) (JP) [Entry date Feb 26 2009] [EM]
4/7/09	Appellee Alliance for Open Society International, Inc., Appellee Open Society Institute, Appellee Pathfinder International, et al motion extended time filed with proof of service. [Entry date Apr 8 2009] [EM]
4/17/09	Notice to all parties of the order filed. [Entry date Apr 17 2009] [EM]
4/17/09	Order FILED GRANTING motion extended time by Appellee Open Society Institute, Appellee Alliance for Open Society International, Inc., Appellee Pathfinder International, Appellee Global Health Council, endorsed on motion dated 4/7/2009, it is hereby ordered that th emotion for an extesnio of time is granted: The Appellee's brief shall be filed on or before 7/7/09; no further extensions. The Appeal shall be heard no earlier than the week of 8/24/09 filed. (RKW, C.J.J.) (JP) NO FURTHER EXTENSIONS. [Entry date Apr 17 2009] [EM]

DATE	PROCEEDINGS
7/8/09	Stipulation to withdraw appeal without prejudice to reinstatement RECEIVED. [Entry date Jul 8 2009] [EM]
7/14/09	Order withdrawing appeal by consent without prejudice to reinstatement stating that the appeal is hereby withdrawn without costs and without attorneys' fees and without prejudice, subject to reactivation of the appeal by appellant's counsel by written notice to the Clerk of this Court by 7/14/09. If not thus timely reactivated, the appeal shall be subject to dismissal. Withdrawal of the appeal from active consideration shall not operate as a dismissal of the appeal under FRAP 42(b) filed. (VK) [Entry date Jul 14 2009] [EM]
7/14/09	Notice to all parties of the Stipulation So Ordered. [Entry date Jul 14 2009] [EM]
7/14/09	Stipulation to withdraw appeal without prejudice to reinstatement RECEIVED. [Entry date Jul 15 2009] [EM]
7/14/09	Letter received from Mr. Torrance, counsel for Appellees, advising the Court of the Stipulation without prejudice being filed, and explaining why additional time is needed by the parties to fully review the policies at issue, and for the agencies to comply with the Administrative Procedure Act and other requirements in revising the relevant regulations and guidance publiccations. [Entry date Jul 16 2009] [EM]

DATE	PROCEEDINGS
7/14/09	Letter received from B. Torrance, counsel for appellee, requesting to have appeal reactivated as per previously filed stipulation. [Entry date Jul 17 2009] [EM]
7/24/09	Order withdrawing appeal by consent without prejudice to reinstatement, the appeal is hereby withdrawn without costs and without attorney's fees and without prejudice, subject to reactivation of the appeal by appellant's counsel by written notice to the Clerk of this Court by 1/8/10. If not thus timely reactivated the appea shall be subject to dismissal FILED. (VK) [Entry date Jul 24 2009] [EM]
7/24/09	Notice to all parties of the Stipulation So Ordered. [Entry date Sep 24 2009] [EM]
9/24/09	Certified copy of the so ordered, stipulation filed 07/24/09 issued to the district court, [informational only]. [Entry date Spt 24 2009] [EM]
1/7/10	Letter received from Appellant Counsel Benjamin Torrance, requesting that the appeal be reinstated in accordance with the terms of the stipulation filed 7/14/09. [Entry date Jan 11 2010] [EM]
1/11/10	Notice of Reinstatement dated 01/11/10 on behalf of appellant/petitioner Alliance for Open Society International, FILED. Reinstatement Code: P. [Entry date Jan 11 2010] [EM]

DATE	PROCEEDINGS
1/11/10	Notice to all parties of the order filed. [Entry date Jan 11 2010] [EM]
1/11/10	Certified copy of the order, filed 1/11/09 issued to the district court, [informational only]. [Entry date Jan 11 2010] [EM]
1/14/10	AMENDED Notice of Reinstatement dated 01/11/2010 on behalf of Defendants-Appellants, FILED. Reinstatement Code: P. [Entry date Jan 14 2010] [EM]
1/14/10	Notice to all parties of the amended order filed. [Entry date Jan 14 2010] [EM]
1/14/10	Certified copy of the amended order, filed 01/14/2010 issued to the district court, [informational only]. [Entry date Jan 14 2010] [EM]
1/19/10	The new case manager assigned to this case is: Ralls, Timothy. [Entry date Jan 19 2010] [DM]
1/19/10	Certified copy of reinstatement order receipt returned from the district court. [Entry date Jan 19 2010] [TR]
1/19/10	Certified copy of amended reinstatement order receipt returned from the district court. [Entry date Jan 19 2010] [TR]

DATE	PROCEEDINGS
1/25/10	SCHEDULING NOTIFICATION dated 01/25/10, on behalf of APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, informing court of proposed brief due date, RECEIVED. [Entry date Jan 26 2010] [TR]
1/25/10	Letter received from Plaintiff-Appellee giving notice of non-opposition to Defendants request for new briefing. [Entry date Jan 26 2010] [TR]
2/4/10	Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant Michael Leavitt, et al motion to file supplemental brief filed with proof of service. [Entry date Feb 5 2010] [AS]
2/9/10	Notice to counsel re Motion Order, filed 2/9/2010 [Entry date Feb 9 2010] [AS]
2/9/10	Order FILED GRANTING motion to file supplemental brief by Appellant Michael Leavitt. "IT IS HEREBY ORDERED that the motion by Appellants for leave to file a new brief on or before May 11, 2010, in light of pending regulatory action, is GRANTED". Before GEL, CJ. By JP, MSA. [Entry date Feb 9 2010] [AS]

DATE	PROCEEDINGS
5/11/10	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, supplemental brief FILED with proof of service. [Entry date May 17 2010] [TR]
5/11/10	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, supplemental special appendix filed (w/pfs) [Entry date May 17 2010] [TR]
5/20/10	SCHEDULING NOTIFICATION dated 05/20/2010, on behalf of APPELLEE Alliance for Open Society International, Inc., Global Health Council, Open Society Institute, Pathfinder International, informing court of proposed brief due date, RECEIVED. [Entry date May 21 2010] [TR]
5/24/10	SO ORDERED SCHEDULING NOTIFICATION dated 05/24/2010 setting APPELLEE Alliance for Open Society International, Inc., Global Health Council, Open Society Institute, Pathfinder International, brief due date: 09/08/2010, FILED. [Entry date May 24 2010] [TR]

DATE	PROCEEDINGS
9/9/10	APPELLEE Alliance for Open Society International, Inc., Global Health Council, Open Society Institute, Pathfinder International, brief filed with proof of service. [Entry date Sep 10 2010] [AJ]
9/16/10	AMICUS CURIAE American Humanist Association, brief filed with proof of service. [Entry date Sep 17 2010] [AJ]
9/16/10	NOTICE OF APPEARANCE FORM from Lenora Lapidus, on behalf of AMICUS CURIAE American Humanist Association, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date Sep 17 2010] [AJ]
9/20/10	NOTICE OF APPEARANCE FORM from Lawrence Lustberg, on behalf of AMICUS CURIAE Independent Sector, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date Sep 22 2010] [AJ]
9/20/10	AMICUS CURIAE Independent Sector, brief filed with proof of service. [Entry date Sep 22 2010] [AJ]
9/21/10	LOCAL RULE 34 ACKNOWLEDGEMENT, dated 09/16/2010, requesting oral argument, on behalf of Appellees Alliance for Open Society International, et al, RECEIVED. [Entry date Sep 21 2010] [AV]

DATE	PROCEEDINGS
9/27/10	APPELLANT United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, ET AL, reply brief filed with proof of service. [Entry date Sep 29 2010] [AJ]
10/6/10	LOCAL RULE 34 ACKNOWLEDGEMENT, dated 09/27/2010, requesting oral argument, on behalf of APPELLANT United States Agency for International Development, ET AL, RECEIVED. [Entry date Oct 6 2010] [CA]
10/26/10	CASE CALENDARING, 12/09/2010, 9:00am, SET. [Entry date Oct 26 2010] [CA]
10/26/10	Calendar argument notice mailed to attorneys/parties. [Entry date Oct 26 2010] [AG]
12/9/10	Case heard before panel: STRAUB, POOLER, PARKER, C.JJ. [Entry date Dec 9 2010] [AG]
12/9/10	Benjamin Torrance receipt for fee for oral argument cd received. [Entry date Dec 10 2010] [AG]
12/10/10	Oral argument cd mailed to Benjamin Torrance. [Entry date Dec 10 2010] [AG]
12/17/10	Cindy Custodio receipt for fee for oral argument cd received. [Entry date Dec 17 2010] [AG]
12/17/10	Oral argument cd mailed to Cindy Custodio. [Entry date Dec 17 2010] [AG]

DATE	PROCEEDINGS
1/28/11	Letter received from Cindy Custodio—US Document Retrieval Service Inc. requesting CD of the Oral Argument. Fee Paid. Forwarded to Calendar Team. Receipt # 211452. [Entry date Jan 28 2011] [SH]
1/28/11	Cindy Custodio receipt for fee for oral argument cd received. [Entry date Feb 1 2011] [AG]
2/1/11	Oral argument cd mailed to Cindy Custodio. [Entry date Feb 1 2011] [AG]
7/6/11	OPINION, district court judgment is affirmed, FILED. (CJS, RSP, BDP) [Entry date Jul 6 2011] [CM]
7/6/11	Judge Straub dissents in a separate opinion, filed. [Entry date Jul 6 2011] [CM]
7/6/11	Notice to all parties of Opinion dated 07/06/2011. [Entry date Jul 6 2011] [CM]
7/6/11	The new case manager assigned to this case is: Mazariego, Connie. [Entry date Jul 6 2011] [CM]
7/6/11	Judgment filed. [Entry date Jul 7 2011] [CM]
7/25/11	Errata sheet re: filed. [Entry date Jul 25 2011] [CM]
8/19/11	MOTION, for extension of time to file petition for rehearing, on behalf of Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant Michael Leavitt FILED. [Entry date Aug 19 2011] [CM]

DATE	PROCEEDINGS
8/25/11	ORDER, granting a motion for extension of time until September 06, 2011 to file a petition for rehearing by RSP FILED [Entry date Aug 25 2011] [AS]
9/6/11	PETITION FOR REHEARING EN BANC, on behalf of Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant Michael Leavitt, et al FILED. [Entry date Sep 12 2011] [CM]
9/13/11	ORDER, dated 09/13/2011, plaintiffs-appellees are directed to file a response to the Petition for Rehearing En Banc filed by defendant-appellant on September 6, 2011. The response must be filed on or before October 13, 2011 and must not exceed 15 pages, FILED. Before: (CJS, RSP, BDP) [Entry date Sep 13 2011] [CM]
9/13/11	Notice to all parties of Order dated 09/13/2011. [Entry date Sep 13 2011] [CM]
10/13/11	OPPOSITION PAPERS, to petition for rehearing en banc, on behalf of Appellees Alliance for Open Society International Inc. et. al. FILED. [Entry date Oct 14 2011] [CM]
11/30/11	LETTER, dated 11/30/2011, on behalf of Rebekah Diller, RECEIVED. [Entry date Nov 30 2011] [CM]
11/30/11	Request for address change for Rebekah Diller c/o Benjamin N. Cardozo School of Law, Yeshiva University, 55 Fifth Avenue, 10th Floor, New York, NY 10003. [Entry date Nov 30 2011] [CM]

DATE	PROCEEDINGS
2/2/12	PETITION OPINION, rehearing en banc is denied, by DJ FILED. [Entry date Feb 2 2012] [CM]
2/2/12	Judge Cabranes, Raggi and Livingston dissents from the denial of rehearing en banc, FILED. [Entry date Feb 2 2012] [CM]
2/2/12	Judge Pooler concurs in the denial of rehearing en banc, FILED. [Entry date Feb 2 2012] [CM]
2/2/12	Notice to all parties of Opinion dated 02/02/2012. [Entry date Feb 2 2012] [CM]
2/2/12	ORDER, denying petition for rehearing en banc on behalf of Appellant Michael Leavitt, Appellant United States Agency for International Development, Appellant Julie Gerberding, Appellant United States Department of Health and Human Services, Appellant United States Centers of Disease Control and Prevention, Appellant Henrietta Fore, FILED. [Entry date Feb 2 2012] [CM]
2/17/12	Judgment MANDATE ISSUED. CLOSED [Entry date Feb 17 2012] [CM]
2/17/12	Notice to all parties of Mandate dated 02/17/2012, [Entry date Feb 17 2012] [CM]
2/21/12	Gloria Pinto receipt for fee for oral argument cd received. [Entry date Apr 9 2012] [AG]
3/1/12	Oral argument cd mailed to Gloria Pinto. [Entry date Apr 9 2012] [AG]

DATE	PROCEEDINGS
4/26/12	EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI on behalf of Appellant United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Henrietta Fore, et al is granted, RECEIVED. [Entry date May 3 2012] [CM]
6/28/12	ERRATA SHEET, for Opinion dated 02/02/2012, by JAC FILED. [Entry date Jun 28 2012] [CM]
7/10/12	U.S SUPREME COURT NOTICE of writ of certiorari filing dated 07/03/2012, U.S. Supreme court docket #12-10, RECEIVED. [Entry date Jul 10 2012] [CM]
1/15/13	Writ of Certiorari GRANTED [Entry date Jan 15 2013] [CM]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)

Docket No. 1:05-cv-08209-VM

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC, ET AL.

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL.

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
9/23/05	1	COMPLAINT against United States Agency for International Development, Andrew Natsios. (Filing Fee $ 250.00, Receipt Number 556437) Document filed by Alliance for Open Society International, Inc., Open Society Institute. (lb,) Additional attachment(s) added on 9/29/2005 (kco,). (Entered: 09/28/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
9/23/05		SUMMONS ISSUED as to United States Agency for International Development, Andrew Natsios, U.S. Attorney and U.S. Attorney General. (lb,) (Entered: 09/28/2005)
9/23/05		Magistrate Judge Debra C. Freeman is so designated. (lb,) (Entered: 09/28/2005)
9/23/05	2	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Alliance for Open Society International, Inc.. (lb,) Additional attachment(s) added on 9/29/2005 (kco,). (Entered: 09/28/2005)
9/23/05		Case Designated ECF. (lb,) (Entered: 09/28/2005)
9/27/05		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 9/27/2005. Court held telephone conf. to address whether this case should be consoldiated with similar case pending in District of Columbia. Plaintiff's request for extension of page limitation for brief in supprot of preliminary injunction motion granted. Gov't to inform Court of anticipated response within one week of receipt of preliminary injunction motion. (pl,) (Entered: 10/06/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
9/28/05	3	MOTION for Preliminary Injunction. Document filed by Alliance for Open Society International, Inc., Open Society Institute. (Attachments: # 1 Declaration of Burt Neuborne # 2 Declaration of Rossana Barbero # 3 Declaration of Chris Beyrer (Part 1 of 3) # 4 Declaration of Chris Beyrer (Part 2 of 3) # 5 Declaration of Chris Beyrer (Part 3 of 3) # 6 Declaration of Pedro Chequer # 7 Declaration of Rebekah Diller (Part 1 of 4) # 8 Declaration of Rebekah Diller (Part 2 of 4) # 9 Declaration of Rebekah Diller (Part 3 of 4) # 10 Declaration of Rebekah Diller (Part 4 of 4) # 11 Declaration of Robert Kushen # 12 Declaration of Ruth W. Messinger # 13 Declaration of Maurice I. Middleberg # 14 Declaration of Aryeh Neier # 15 Certificate of Service) (Diller, Rebekah) (Entered: 09/28/2005)
9/28/05	4	MEMORANDUM OF LAW in Support re: 3 MOTION for Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Open Society Institute. (Attachments: # 1 Certificate of Ser-

DATE	DOCKET NUMBER	PROCEEDINGS
		vice) (Diller, Rebekah) (Entered: 09/28/2005)
9/29/05		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney David Stuart Udell for noncompliance with Section (3) of the S.D.N.Y. 3rd Amended Instructions For Filing An Electronic Case or Appeal and Section 1 (d) of the S.D.N.Y. Procedures For Electronic Case Filing. E-MAIL the PDF for Document 1 Complaint, 2 Rule 7.1 Disclosure Statement to: case_openings@nysd.uscourts.gov. (lb,) (Entered: 09/29/2005)
9/30/05	5	SUMMONS RETURNED EXECUTED Summons and Complaint, served. United States Agency for International Development served on 9/23/2005, answer due 10/13/2005; Andrew Natsios served on 9/23/2005, answer due 10/13/2005. Service was accepted by Daniel Green. Document filed by Alliance for Open Society International, Inc.; Open Society Institute. (Diller, Rebekah) (Entered: 09/30/2005)
10/3/05	6	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION for Pre-

DATE	DOCKET NUMBER	PROCEEDINGS
		liminary Injunction (Amended Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction). Document filed by Alliance for Open Society International, Inc., Open Society Institute. (Diller, Rebekah) Modified on 10/6/2005 (kg). (Entered: 10/03/2005)
10/6/05		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Rebekah Diller to RE-FILE Document 6 MOTION for Preliminary Injunction *Amended Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction.*. Use the document type Memorandum of Law in Support of Motion found under the document list Responses and Replies. (kg,) (Entered: 10/06/2005)
10/11/05	7	AMENDED MEMORANDUM OF LAW in Support re: 3 MOTION for Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Open Society Institute. (Diller, Rebekah) (Entered: 10/11/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
10/12/05	8	MOTION for Temporary Restraining Order. Document filed by Alliance for Open Society International, Inc., Open Society Institute. (Attachments: # 1 Affidavit Declaration of Rebekah Diller # 2 Exhibit Exhibit A to Diller Declaration # 3 Exhibit Exhibit B to Diller Declaration # 4 Exhibit Exhibit C to Diller Declaration # 5 Text of Proposed Order Order to Show Cause with Temporary Restraining Order) (Diller, Rebekah) (Entered: 10/12/2005)
10/14/05	9	STIPULATION AND ORDER that during the pendency of plntfs' motions for perliminary injunction and a TRO, AOSI will in good faith not take any action that they think violates the US Leadership against HIV et al. (Signed by Judge Victor Marrero on 10/13/05) (cd,) (Entered: 10/14/2005)
10/18/05	10	TRANSCRIPT of proceedings held on 10/7/2005 before Judge Victor Marrero. (jar,) (Entered: 10/18/2005)
10/20/05	11	ENDORSED LETTER addressed to Judge Victor Marrero from Richard E. Rosberger dated 10/19/05 re: The briefing schedule set forth in

DATE	DOCKET NUMBER	PROCEEDINGS
		said letter with respect to plaintiffs motion for a temporary restraining order is approved. Defendants response served by 11/21/05, reply served by 12/9/05. (Signed by Judge Victor Marrero on 10/19/05) (db,) (Entered: 10/20/2005)
11/9/05	12	Amicus Curiae APPEARANCE entered by Christine Ingrid Magdo on behalf of AIDS Action et al.. (Magdo, Christine) (Entered: 11/09/2005)
11/9/05	13	RESPONSE in Support re: 3 MOTION for Preliminary Injunction. *Memorandum of Law of AIDS Action and 21 Other Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction.* Document filed by AIDS Action et al.. (Magdo, Christine) (Entered: 11/09/2005)
11/9/05	14	CERTIFICATE OF SERVICE of Notice of Appearance, Memorandum of Law served on Alliance for Open Society International, Inc., Open Society Institute, United States Agency for International Development, Andrew S. Natsios on November 9, 2005. Service was made by Mail (Federal Express). Document filed by AIDS Action et

DATE	DOCKET NUMBER	PROCEEDINGS
		al.. (Magdo, Christine) (Entered: 11/09/2005)
11/9/05	15	NOTICE of Appearance by Claudia Maria Flores on behalf of AIDS Action et al. (Flores, Claudia) (Entered: 11/09/2005)
11/9/05	16	NOTICE of Appearance by Claudia Maria Flores on behalf of AIDS Action et al. (Flores, Claudia) (Entered: 11/09/2005)
11/9/05	17	NOTICE of Appearance by Claudia Maria Flores on behalf of AIDS Action et al. (Flores, Claudia) (Entered: 11/09/2005)
11/10/05	18	ENDORSED LETTER addressed to Judge Victor Marrero from Christine I. Magdo dated 11/9/05 re: Request granted. Amici Curiae herein are granted leave to file Memorandum of Law in support of plaintiffs' motion for preliminary injunction.. (Signed by Judge Victor Marrero on 11/10/05) (sac,) (Entered: 11/14/2005)
12/5/05	20	AMENDED COMPLAINT amending 1 Complaint, against Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and

DATE	DOCKET NUMBER	PROCEEDINGS
		Human Services, United States Agency for International Development, Andrew Natsios. Document filed by Pathfinder International, Alliance for Open Society International, Inc., Open Society Institute. Related document: 1 Complaint, filed by Open Society Institute, Alliance for Open Society International, Inc.. (sac,) (Entered: 12/08/2005)
12/5/05		SUMMONS ISSUED as to United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (sac,) (Entered: 12/08/2005)
12/5/05		Set Answer Due Date purs. to 20 Amended Complaint,, as to United States Agency for International Development answer due on 12/19/2005; Andrew Natsios answer due on 12/19/2005; Julie Louise Gerberding answer due on 1/3/2006; Michael O. Leavitt answer due on 1/3/2006; United States Centers of Disease Control and Prevention answer due on 1/3/2006; United States

DATE	DOCKET NUMBER	PROCEEDINGS
		Department of Health and Human Services answer due on 1/3/2006. (sac,) (Entered: 12/08/2005)
12/5/05	21	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (sac,) (Entered: 12/08/2005)
12/6/05	19	ENDORSED LETTER addressed to Judge Victor Marrero from Jane Manning dated 12/5/05 re: counsel requests to file their motion on 12/12/05 and a conference with the court if the court prefers counsel to follow a different procedure. So Ordered. (Signed by Judge Victor Marrero on 12/6/05) (dle,) (Entered: 12/07/2005)
12/6/05		Set/Reset Deadlines: Motions due by 12/12/2005. (dle,) (Entered: 12/07/2005)
12/8/05	22	MOTION for Preliminary Injunction. Document filed by Pathfinder International. (Attachments: # 1 Affidavit Declaration of Daniel Pellegrom) (Diller, Rebekah) (Entered: 12/08/2005)
12/8/05	23	MEMORANDUM OF LAW in Support re: 22 MOTION for Prelimi-

DATE	DOCKET NUMBER	PROCEEDINGS
		nary Injunction.. Document filed by Pathfinder International. (Diller, Rebekah) (Entered: 12/08/2005)
12/9/05	24	Amicus Curiae APPEARANCE entered by Jessica Neuwirth on behalf of Apne Aap et.al [Amicus]. (Neuwirth, Jessica) (Entered: 12/09/2005)
12/13/05		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 12/13/2005. Counsel for plaintiff and goverment dft's in light of addition of new discuss possible adjustment to filing deadline (pl,) (Entered: 01/10/2006)
12/16/05	25	SUMMONS RETURNED EXECUTED Summons and Amended Complaint,, served. United States Agency for International Development served on 12/5/2005, answer due 2/3/2006; Andrew Natsios served on 12/5/2005, answer due 2/3/2006; Julie Louise Gerberding served on 12/6/2005, answer due 2/6/2006; Michael O. Leavitt served on 12/6/2005, answer due 2/6/2006; United States Centers of Disease Control and Prevention served on 12/6/2005, answer due 2/6/2006;

DATE	DOCKET NUMBER	PROCEEDINGS
		United States Department of Health and Human Services served on 12/6/2005, answer due 2/6/2006. Service was made by MAIL. Document filed by Alliance for Open Society International, Inc.; Pathfinder International; Open Society Institute. (Diller, Rebekah) (Entered: 12/16/2005)
1/3/06	26	ENDORSED LETTER addressed to Judge Victor Marrero from Richard E. Rosberger dated 1/3/06 re: request granted; the briefing schedule with regard to the motion for preliminary injunction herein is extended as set forth in this order. (Signed by Judge Victor Marrero on 1/3/06) (pl,) (Entered: 01/04/2006)
1/4/06	27	MEMORANDUM OF LAW in Opposition re: 22 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order., 3 MOTION for Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and

DATE	DOCKET NUMBER	PROCEEDINGS
		Human Services. (Rosberger, Richard) (Entered: 01/04/2006)
1/4/06	28	DECLARATION of Richard E. Rosberger in Opposition re: 22 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order., 3 MOTION for Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Rosberger, Richard) (Entered: 01/04/2006)
1/4/06	29	DECLARATION of Richard E. Rosberger in Opposition re: 22 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order., 3 MOTION for Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and

DATE	DOCKET NUMBER	PROCEEDINGS
		Prevention, United States Department of Health and Human Services. (Attachments: # 1 Exhibit A# 2 Exhibit C) (Rosberger, Richard) (Entered: 01/04/2006)
1/4/06	30	ENDORSED LETTER addressed to Judge Victor Marrero from Richard E. Rosberger dated 1/3/2006 re: to Defendants request permission to file an opposition brief with a page length of up to 55 pages, as so that it may properly respond to all of the Plaintiff motions and to the amici briefs. Further, Defendants respectfully request that the date for Defendants submit their answer to the Amended Complaint be extended from January 3, 2006 to January 10, 2006. Plaintiffs have consented to the foregoing requests, and that their reply brief upon their motions be extended from January 24, 2006 to January 25, 2006.., United States Agency for International Development answer due 1/10/2006; Andrew Natsios answer due 1/10/2006; Julie Louise Gerberding answer due 1/10/2006; Michael O. Leavitt answer due 1/10/2006; United States Centers of Disease Control and

DATE	DOCKET NUMBER	PROCEEDINGS
		Prevention answer due 1/10/2006; United States Department of Health and Human Services answer due 1/10/2006. Replies due by 1/25/2006. Responses due by 1/4/2006. ENDORSEMENT: Request GRANTED. The briefing schedule with regard to the motion for preliminary injunction herein is extended as set forth herein motion papers submitted by response 1/4/2006; reply 1/25/2006. Defendants' brief may contain up to 55 pages. Defendants' time ro answer the amended complaint is extended to 1/10/2006. So Ordered. (Signed by Judge Victor Marrero on 1/3/2006) (jmi,) (Entered: 01/05/2006)
1/5/06	31	DECLARATION of Richard E. Rosberger in Opposition re: 22 MOTION for Preliminary Injunction., 6 MOTION for Preliminary Injunction *Amended Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction.*, 3 MOTION for Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie

DATE	DOCKET NUMBER	PROCEEDINGS
		Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 # 5 Exhibit E) (Rosberger, Richard) (Entered: 01/05/2006)
1/6/06	32	MEMORANDUM OF LAW in Opposition re: 22 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order., 3 MOTION for Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (Rosberger, Richard) (Entered: 01/06/2006)
1/12/06	34	ENDORSED LETTER addressed to Judge Victor Marrero from Michael J. Garcia dated 1/10/06 re: Counsel writes to request that the date for defendants to answer the amended complaint be extended to 1/13/06. Request Granted. The

DATE	DOCKET NUMBER	PROCEEDINGS
		time for defendant(s) to answer or otherwise move with respect to the complaint in this action is extended to 1/13/06. So Ordered. (Signed by Judge Victor Marrero on 1/12/06) (jco,) (Entered: 01/18/2006)
1/17/06	33	STIPULATION AND ORDER during the pendency of plaintiff Pathfinder's motion for a preliminary injunction, Pathfinder will in good faith not take any action that it thinks violates the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, 22 U.S.C. 7631(f)(the "Act"),etc. as further set forth in this Order. So Ordered. (Signed by Judge Victor Marrero on 1/12/06) (jco,) (Entered: 01/18/2006)
1/17/06		Set Answer Due Date purs. to 34 Endorsed Letter, as to United States Agency for International Development answer due on 1/13/2006; Andrew Natsios answer due on 1/13/2006; Julie Louise Gerberding answer due on 1/13/2006; Michael O. Leavitt answer due on 1/13/2006; United States Centers of Disease Control and Prevention answer due on 1/13/2006; United States Depart-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment of Health and Human Services answer due on 1/13/2006. (jco,) (Entered: 01/18/2006)
1/19/06	35	ANSWER to Amended Complaint. Document filed by Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt. (Rosberger, Richard) (Entered: 01/19/2006)
1/19/06	36	Amicus Curiae APPEARANCE entered by Lawrence S. Lustberg on behalf of InterAction. (Attachments: # 1 Memorandum of Law of Proposed Amicus Curiae Interaction in Support of Plaintiffs Motion for a Preliminary Injunction) (Lustberg, Lawrence) (Entered: 01/19/2006)
1/25/06	37	ENDORSED LETTER addressed to Judge Victor Marrero from Rebekah Diller dated 1/24/06 re: a request to file a reply brief not exceeding 43 pages in length. ENDORSEMENT: Request GRANTED. Plaintiff's reply brief herein may exceed to Court's page limitation up to a total of 43 pages as set forth above (Signed by Judge Victor Marrero on 1/24/06) (kco,) (Entered: 01/25/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
1/25/06	38	NOTICE OF APPEARANCE by David William Bowker on behalf of Pathfinder International, Open Society Institute (Bowker, David) (Entered: 01/25/2006)
1/25/06	39	NOTICE OF APPEARANCE by David William Bowker on behalf of Alliance for Open Society International, Inc. (Bowker, David) (Entered: 01/25/2006)
1/25/06	40	REPLY MEMORANDUM OF LAW in Support re: 22 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order., 3 MOTION for Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 01/25/2006)
1/25/06	41	DECLARATION of Rebekah Diller in Support re: 22 MOTION for Preliminary Injunction., 3 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3

DATE	DOCKET NUMBER	PROCEEDINGS
		Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6) (Diller, Rebekah) (Entered: 01/25/2006)
1/25/06	42	DECLARATION of Robert Kushen in Support re: 22 MOTION for Preliminary Injunction., 3 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit Exhibit 1) (Diller, Rebekah) (Entered: 01/25/2006)
1/25/06	43	DECLARATION of Daniel E. Pellegrom in Support re: 22 MOTION for Preliminary Injunction., 3 MOTION for Preliminary Injunction., 8 MOTION for Temporary Restraining Order.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 # 7 Exhibit Exhibit 7 # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 # 10 Exhibit Exhibit 10 # 11

DATE	DOCKET NUMBER	PROCEEDINGS
		Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13) (Diller, Rebekah) (Entered: 01/26/2006)
1/31/06	44	ENDORSED LETTER addressed to Judge Victor Marrero from Megan Lewis dated 1/30/06 re: Application GRANTED. The 36 Motion of InterAction, to participate in this action as amicus curiae is GRANTED. InterAction is authorized to file a memorandum of law. If the Government elects to respond seperately, it shall propose a briefing schedule. (Signed by Judge Victor Marrero on 1/30/06) (db,) (Entered: 01/31/2006)
2/23/06	45	MOTION for an order, admitting Richard A. Johnston to Appear Pro Hac Vice. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (sac,) (Entered: 02/28/2006)
3/3/06	46	ORDER; granting 45 Motion for Richard A. Johnston to Appear Pro Hac Vice. (Signed by Judge Victor Marrero on 3/2/06) (pl,) (Entered: 03/03/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
3/3/06		Transmission to Attorney Admissions Clerk. Transmitted re: 46 Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (pl,) (Entered: 03/03/2006)
3/14/06		CASHIERS OFFICE REMARK on 46 Order on Motion to Appear Pro Hac Vice in the amount of $25.00, paid on 3/6/2006, Receipt Number 571893. (jd,) (Entered: 03/14/2006)
4/13/06		Minute Entry for proceedings held before Judge Victor Marrero: Oral Argument held on 4/13/2006 re: 22 MOTION for Preliminary Injunction. filed by Pathfinder International. (pl,) (Entered: 04/21/2006)
4/19/06	47	STIPULATION AND ORDER: It is hereby stipulated and agreed that during the pendency of Pathfinder International's motion for a preliminary injunction, Pathfinder International will in good faith not take any action that it thinks violates the US Leadership Against HIV/AIDS, Tuberculosis, and Malaris Act of 2003, 22 USC 7631(f) CDC Funding Opportunity numbers 04263, 04208, and 04256 and Pathfinder Interna-

DATE	DOCKET NUMBER	PROCEEDINGS
		tional's related representations... (Signed by Judge Victor Marrero on 1/12/2006) (lb,) (Entered: 04/19/2006)
4/26/06	48	TRANSCRIPT of proceedings held on 4/13/2006 @ 9:05 a.m. before Judge Victor Marrero. (lb,) (Entered: 04/26/2006)
5/9/06	49	DECISION AND ORDER that the parties to submit to the Court, with fourteen days of the date of this Order, a proposed preliminary injunction conforming with the determinations in this Decision. So Ordered. (Signed by Judge Victor Marrero on 5/9/2006) (jmi,) (Entered: 05/09/2006)
5/24/06	50	ENDORSED LETTER addressed to Judge Marrero from Richard Rosberger dated 5/23/06: the time for the parties to submit the proposed preliminary injunction hearing is extended to 6/24/06.. (Signed by Judge Victor Marrero on 6/23/06) (cd,) Additional attachment(s) added on 5/25/2006 (cd,). (Entered: 05/25/2006)
6/2/06		Minute Entry for proceedings held before Judge Victor Marrero: Interim Pretrial Conference held on

DATE	DOCKET NUMBER	PROCEEDINGS
		6/2/2006. Counsel for all parties present. Parties to negotioate to try to agree to injunction by 6/9/2006. Plaintiffs to notify Court of status of negotiations. Court to determine injunction if no agreement by 6/9/2006. (jar,) (Entered: 07/17/2006)
6/12/06	51	ENDORSED LETTER addressed to Judge Victor Marrero from Richard E. Rosberger dated 6/9/06. ENDORSEMENT: request GRANTED. The time for the parties to submit a proposed preliminary injunction herein is extended to 6/12/06. (Signed by Judge Victor Marrero on 6/9/06) (js,) (Entered: 06/12/2006)
6/21/06	52	TRANSCRIPT of proceedings held on 6/2/06 before Judge Victor Marrero. (tro,) (Entered: 06/21/2006)
6/29/06	53	PRELIMINARY INJUNCTION ORDER: Pending entry of a final judgment on the merits of the parties' dispute in this action or until any reconsideration or modification of the order is authorized by the court; dfts are enjoined as further set forth in this order. (Signed by

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge Victor Marrero on 6/26/06) (dle,) (Entered: 06/30/2006)
8/7/06	54	ENDORSED LETTER addressed to Judge Victor Marrero from Rebekah Diller dated 8/4/06 re: counsel for plaintiffs request permission to file a motion seeking leave to file a second amended complaint and permission to move for a preliminary injunction. Request granted. A status conference herein is scheduled for 8/11/06 at 1:30 p.m. to address the matter described above by plaintiffs, unless prior thereto the parties stipulate to the amendment of the complaint proposed. So Ordered. (Signed by Judge Victor Marrero on 8/4/06) (dle,) (Entered: 08/08/2006)
8/7/06		Set/Reset Hearings: Status Conference set for 8/11/2006 01:30 PM before Judge Victor Marrero. (dle,) (Entered: 08/08/2006)
8/10/06	55	ENDORSED LETTER addressed to Judge Marrero from Richard E. Rosberger dated 8/9/06 re: Government defendants respond to Plaintiffs' letter, dated August 6, 2006, requesting a pre-motion conference; Request Granted. A status confer-

DATE	DOCKET NUMBER	PROCEEDINGS
		ence herein is scheduled for 8/25/06 at 2:00 p.m. to address the matter described above by defendants.. plaintiffs' prior correspondence in this regard.. (Signed by Judge Victor Marrero on 8/10/06) (djc,) (Entered: 08/10/2006)
8/22/06	56	ENDORSED LETTER addressed to Judge Victor Marrero from Laura K. Abel dated 8/16/2006 re: respectfully requesting a postponement of the status conference for 8/25/2006. ENDORSEMENT: Request Granted. The next status conference herein is rescheduled to 9/6/2006 at 10:00 a.m. So Ordered. (Signed by Judge Victor Marrero on 8/21/2006) (lb,) (Entered: 08/22/2006)
8/25/06	57	NOTICE OF APPEAL from 53 Preliminary Injunction,. Document filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (A.U.S.A.) (nd,) (Entered: 08/29/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
8/29/06		Transmission of Notice of Appeal to the District Judge re: 57 Notice of Appeal,. (nd,) (Entered: 08/29/2006)
8/29/06		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 57 Notice of Appeal,. (nd,) (Entered: 08/29/2006)
8/29/06		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 23 Memorandum of Law in Support of Motion filed by Pathfinder International,, 34 Endorsed Letter,, 12 Amicus Curiae Appearance filed by AIDS Action et al.,, 35 Answer to Amended Complaint filed by Andrew Natsios,, Michael O. Leavitt,, Julie Louise Gerberding,, 5 Summons Returned Executed, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 18 Endorsed Letter,, 17 Notice of Appearance filed by AIDS Action et al.,, 19 Endorsed Letter,, 22 MOTION for Preliminary Injunction. filed by Pathfinder International,, 14 Certificate of Service Other, filed by AIDS Action et al.,, 3 MOTION

DATE	DOCKET NUMBER	PROCEEDINGS
		for Preliminary Injunction. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 37 Endorsed Letter,, 26 Endorsed Letter,, 43 Declaration in Support of Motion,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 38 Notice of Appearance filed by Open Society Institute,, Pathfinder International,, 47 Stipulation and Order,,, 25 Summons Returned Executed as to USA,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 6 MOTION for Preliminary Injunction *Amended Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction.* filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 9 Stipulation and Order,, 46 Order on Motion to Appear Pro Hac Vice, 44 Endorsed Letter,, 33 Stipulation and Order,, 29 Declaration in Opposition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Develop-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 13 Response in Support of Motion, filed by AIDS Action et al.,, 41 Declaration in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 27 Memorandum of Law in Oppisition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 28 Declaration in Opposition to Motion,, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 31 Declaration in Opposition to Motion,, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Develop-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 2 Rule 7.1 Disclosure Statement filed by Alliance for Open Society International, Inc.,, 42 Declaration in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 1 Complaint, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 57 Notice of Appeal, filed by United States Department of Health and Human Services,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, 8 MOTION for Temporary Restraining Order. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 32 Memorandum of Law in Oppisition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 55 Endorsed Letter,, 50 Endorsed

DATE	DOCKET NUMBER	PROCEEDINGS
		Letter,, 53 Preliminary Injunction,, 51 Endorsed Letter,, 40 Reply Memorandum of Law in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 15 Notice of Appearance filed by AIDS Action et al.,, 11 Endorsed Letter,, 7 Memorandum of Law in Support of Motion filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 56 Endorsed Letter,, 45 MOTION for Richard A. Johnston to Appear Pro Hac Vice. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 16 Notice of Appearance filed by AIDS Action et al.,, 20 Amended Complaint,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 49 Order,, 24 Amicus Curiae Appearance filed by Apne Aap et.al [Amicus],, 54 Endorsed Letter,,, 4 Memorandum of Law in Support of Motion filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 36 Amicus Curiae Appearance filed by InterAction,, 39 Notice of Appear-

DATE	DOCKET NUMBER	PROCEEDINGS
		ance filed by Alliance for Open Society International, Inc., were transmitted to the U.S. Court of Appeals. (nd,) (Entered: 08/29/2006)
9/6/06		Minute Entry for proceedings held before Judge Victor Marrero: Pretrial Conference held on 9/6/2006. (cd,) (Entered: 09/11/2006)
9/25/06	58	NOTICE of Notice of Appearance and Request for Electronic Notification. Document filed by Alliance for Open Society International, Inc.. (Rosberger, Richard) (Entered: 09/25/2006)
10/16/06	59	ENDORSED LETTER addressed to Judge Victor Marrero from Laura Abel dated 10/13/06 re: counsel for plaintiffs request to provide the court with a further update on the progress and/or results of these surveys on or before 11/13/06. Request granted. The time for plaintiffs to update the court on the survey described above is extended to 11/13/06. So Ordered. (Signed by Judge Victor Marrero on 10/13/06) (dle,) (Entered: 10/16/2006)
10/16/06		Set/Reset Deadlines: Status Report due by 11/13/2006. (dle,) (Entered: 10/16/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
10/27/06	60	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal for 57 Notice of Appeal, filed by United States Department of Health and Human Services, United States Agency for International Development, United States Centers of Disease Control and Prevention, USCA Case Number 06-4035, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp,) Additional attachment(s) added on 11/20/2006 (tp,). (Entered: 10/27/2006)
11/15/06	61	ENDORSED LETTER addressed to Judge Marrero from Laura Abel dated 11/13/06 re plntf request for a status conference: a status conf is set for 12/4/06 at 3:00 pm to address the matter described above by plaintiffs. (Signed by Judge Victor Marrero on 11/15/06) (cd,) (Entered: 11/15/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
11/15/06		Set/Reset Scheduling Order Deadlines: Status Conference set for 12/4/2006 03:00 PM before Judge Victor Marrero. (cd,) (Entered: 11/15/2006)
12/4/06		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference held on 12/4/2006. Parties are to submit an appropriate briefing schedule or alternative plan for determining which plaintiffs can bring forth claims with timing of pending appeal as a factor. (jar,) (Entered: 12/08/2006)
1/26/07	62	NOTICE OF APPEARANCE by Richard Edward Rosberger on behalf of United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services (Rosberger, Richard) (Entered: 01/26/2007)
6/26/07	63	ORDER PLACING CASE ON SUSPENSE: This action be placed on the Court's Suspense Docket pending a ruling by the Court of Appeals for the Second Circuit on dft's appeal of this Court's Order dated 6/30/2006. (Signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
		Victor Marrero on 6/26/2007) (jar) (Entered: 06/27/2007)
11/30/07		Minute Entry for proceedings held before Judge Victor Marrero: Interim Pretrial Conference held on 11/30/2007. Judge's Decision: Parties to submit letter in 10 days informing the court of their discussions and the contemplated schedule. (djc) (Entered: 12/10/2007)
12/27/07	64	MANDATE of USCA (Certified Copy) as to 57 Notice of Appeal, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services USCA Case Number 06-4035-cv. Ordered, Adjudged and Decreed that the case is REMANDED to the District Court for further proceedings consistent with this order. Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 12/21/2007. (nd) (Entered: 12/27/2007)
12/27/07		Transmission of USCA Mandate/ Order to the District Judge re: 64 USCA Mandate,. (nd) (Entered: 12/27/2007)

DATE	DOCKET NUMBER	PROCEEDINGS
2/4/08	65	ENDORSED LETTER addressed to Judge Victor Marrero from Laura K. Abel dated 2/1/08 re: Counsel for plaintiffs request permission to submit an overlength brief regarding Plaintiffs' motions to amend the complaint and to extend the preliminary injunction to cover Global Health Council of Inter Action. Plaintiffs request leave to file a 40-page brief.. ENDORSEMENT: Request granted. The page limitations provision of the Court's Individual Practices is modified to authorize plaintiffs to file a brief not to exceed 40 pages in connection with the motion to amend the complaint and add a party herein. So Ordered. (Signed by Judge Victor Marrero on 2/4/08) (js) (Entered: 02/04/2008)
2/8/08	66	MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 02/08/2008)

DATE	DOCKET NUMBER	PROCEEDINGS
2/8/08	67	MEMORANDUM OF LAW in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A) (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	68	DECLARATION of Rebekah Diller in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F) (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	69	DECLARATION of Nils Daulaire in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a

DATE	DOCKET NUMBER	PROCEEDINGS
		Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A) (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	70	DECLARATION of Daniel E. Pellegrom in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N) (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	71	DECLARATION of Sam Worthington in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open So-

DATE	DOCKET NUMBER	PROCEEDINGS
		ciety International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	72	DECLARATION of Helene Gayle in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	73	DECLARATION of Pape Gaye in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 02/08/2008)
2/8/08	74	DECLARATION of Mark Sidel in Support re: 66 MOTION for Leave to File A Second Amended Com-

DATE	DOCKET NUMBER	PROCEEDINGS
		plaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit B1, # 4 Exhibit B2, # 5 Exhibit B3, # 6 Exhibit B4, # 7 Exhibit B5, # 8 Exhibit C, # 9 Exhibit D, # 10 Exhibit E, # 11 Exhibit F)(Diller, Rebekah) (Entered: 02/08/2008)
3/6/08	75	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 3/5/2008 re: This Office represents the defendants in the above-named case. I am writing to request an extension of time to respond to plaintiffs' motion to amend the complaint and extend the preliminary injunction to additional parties, as follows: Government's response (now due March 7): March 17; Plaintiffs' reply (now due March 28) April 7. ENDORSEMENT: Request Granted. The briefing schedule with regard to the motion to amend the complaint herein is extended as set forth here-

DATE	DOCKET NUMBER	PROCEEDINGS
		in: motion papers submitted by response 3-17-08; reply 4-7-08. SO ORDERED. (Responses due by 3/17/2008, Replies due by 4/7/2008.) (Signed by Judge Victor Marrero on 3/5/2008) (jmi) (Entered: 03/06/2008)
3/14/08	76	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 3/13/08 re: Counsel for defendant requests an enlargement of the Government's brief due on March 17, in opposition to plaintiffs' motion to amend the complaint and extend the preliminary injunction, from 25 to 40 pages. Plaintiffs previously obtained an equivalent enlargement of their opening brief, and have consented to this request. ENDORSEMENT: Request granted. The page limitations provision of the Court's Individual Practices is modified to authorize The Government to file a brief not to exceed 41 pages in connection with the motion to amend the complaint herein and extend the preliminary injunction. So Ordered. (Signed by Judge Victor Marrero on 3/14/08) (js) (Entered: 03/14/2008)

DATE	DOCKET NUMBER	PROCEEDINGS
3/17/08	77	MEMORANDUM OF LAW in Opposition re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (Torrance, Benjamin) (Entered: 03/17/2008)
3/17/08	78	DECLARATION of Benjamin H. Torrance in Opposition re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (Attachments: # 1 Exhibit HHS Guidance, # 2 Ex-

DATE	DOCKET NUMBER	PROCEEDINGS
		hibit USAID AAPD, # 3 Exhibit GHC Member List, # 4 Exhibit DKT Complaint) (Torrance, Benjamin) (Entered: 03/17/2008)
3/17/08	79	NOTICE OF APPEARANCE by Benjamin H. Torrance on behalf of United States Agency for International Development, Andrew Natsios, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services (Torrance, Benjamin) (Entered: 03/17/2008)
4/4/08	80	ENDORSED LETTER addressed to Judge Marrero from Laura K. Abel dated 4/4/08 re: Counsel for Plaintiffs request permission to submit an overlength reply regarding Plaintiffs' motions to amend the complaint and to extend the preliminary injunction to cover Global Health Council and InterAction. ENDORSEMENT: Request GRANTED. The page limitations provision of the Court's Individual Practices is modified to authorize plaintiff's to file a brief not to exceed 26 pages in connection with the

DATE	DOCKET NUMBER	PROCEEDINGS
		motion to amend the complaint herein. (Signed by Judge Victor Marrero on 4/4/08) (tro) (Entered: 04/04/2008)
4/7/08	81	REPLY MEMORANDUM OF LAW in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 04/07/2008)
4/7/08	82	REPLY AFFIDAVIT of Nils Daulaire in Support re: 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction.. Document filed by Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. (Diller, Rebekah) (Entered: 04/07/2008)
8/8/08	83	DECISION AND ORDER: For the reasons stated herein, it is hereby ordered that the motion (docket no. 66) of plaintiffs Alliance for Open

DATE	DOCKET NUMBER	PROCEEDINGS
		Society International (AOSI) and Pathfinder International (Pathfinder) for leave to file a second amended complaint to add Global Health Council (GHC) and InterAction as plaintiffs to this action is GRANTED. The motion of GHC and InterAction for a preliminary injunction, is GRANTED, as set forth herein. DKT, as member of GHC, shall be barred form benefiting from the preliminary injunction. (Signed by Judge Victor Marrero on 8/7/2008) (jpo) (Entered: 08/08/2008)
8/18/08	84	SECOND AMENDED COMPLAINT amending 20 Amended Complaint,, against Henrietta Fore, Global Health Council, United States Agency for International Development, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. Document filed by Global Health Council, InterAction, Alliance for Open Society International, Inc., Pathfinder International, Open Society Institute. Related docu-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment: 20 Amended Complaint,, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International. (dle) (dle). (Entered: 08/19/2008)
8/25/08	85	ENDORSED LETTER addressed to Judge Victor Marrero from Rebekah Diller dated 8/25/2008 re: Counsel writes in response to the Court's request that the parties agree on a schedule for further proceedings in this case. The parties have agreed that any further proceedings in this case should await the issuance of a final regulation by HHS. ENDORSEMENT: Request GRANTED. Further proceedings in this matter are stayed pending the rule making purpose by defendant's Department of Health and Human Services. The Clerk of Court is directed to maintain this action on the Court's suspense docket. So Ordered. (Signed by Judge Victor Marrero on 8/25/2008) (jfe) (Entered: 08/25/2008)
9/2/08	86	ANSWER to Amended Complaint. Document filed by United States Agency for International Development, Andrew Natsios, Henrietta

DATE	DOCKET NUMBER	PROCEEDINGS
		Fore, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. Related document: 84 Amended Complaint,, filed by Alliance for Open Society International, Inc., Open Society Institute, InterAction, Global Health Council, Pathfinder International. (Torrance, Benjamin) (Entered: 09/02/2008)
9/29/08		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Status Conference held on 9/29/2008. Counsel to notify the Court in 1-2 days as to whether each party consents to a conditional order of discontinuance. (tro) (Entered: 10/06/2008)
9/29/08		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 9/29/2008. Counsel to notify the Court in 1-2 days as to whether each party consents to a conditional order of discontinuance. (jpo) (Entered: 10/08/2008)
10/6/08	87	NOTICE OF APPEAL from 83 Order on Motion for Leave to File

DATE	DOCKET NUMBER	PROCEEDINGS
		Document. Document filed by United States Agency for International Development, Henrietta Fore, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (nd) (Entered: 10/06/2008)
10/6/08		Transmission of Notice of Appeal to the District Judge re: 87 Notice of Appeal. (nd) (Entered: 10/06/2008)
10/6/08		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 87 Notice of Appeal,. (nd) (Entered: 10/06/2008)
10/6/08		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 76 Endorsed Letter, Set Deadlines/Hearings,,,,,,, 78 Declaration in Opposition to Motion,, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Julie Louise Gerberding, Andrew Nat-

DATE	DOCKET NUMBER	PROCEEDINGS
		sios, 82 Reply Affidavit in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 87 Notice of Appeal, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding, 72 Declaration in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 66 MOTION for Leave to File A Second Amended Complaint and Motion by Global Health Council and Interaction for a Preliminary Injunction. filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 65 Endorsed Letter, Set Deadlines/Hearings,,,, 69 Declaration in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 62 Notice of Appearance filed by United States Agency for International De-

DATE	DOCKET NUMBER	PROCEEDINGS
		velopment, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, 67 Memorandum of Law in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 68 Declaration in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 58 Notice (Other) filed by Alliance for Open Society International, Inc., 59 Endorsed Letter, 85 Endorsed Letter,, 80 Endorsed Letter,, 84 Amended Complaint,, filed by Alliance for Open Society International, Inc., Open Society Institute, InterAction, Global Health Council, Pathfinder International, 83 Order on Motion for Leave to File Document,, 74 Declaration in Support of Motion,, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 73 Declaration in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 60 Supplemental

DATE	DOCKET NUMBER	PROCEEDINGS
		ROA Sent to USCA Index,, 64 USCA Mandate, 63 Order Placing Case on Suspense, 75 Endorsed Letter, Set Deadlines,,,,,, 70 Declaration in Support of Motion,, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 77 Memorandum of Law in Opposition to Motion, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Julie Louise Gerberding, Andrew Natsios, 81 Reply Memorandum of Law in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 79 Notice of Appearance, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Julie Louise Gerberding, Andrew Natsios, 61 Endorsed Letter, 86 Answer to Amended Complaint, filed by

DATE	DOCKET NUMBER	PROCEEDINGS
		United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding, Andrew Natsios, 71 Declaration in Support of Motion, filed by Alliance for Open Society International, Inc., Open Society Institute, Pathfinder International, 23 Memorandum of Law in Support of Motion filed by Pathfinder International,, 34 Endorsed Letter,, 12 Amicus Curiae Appearance filed by AIDS Action et al.,, 35 Answer to Amended Complaint filed by Andrew Natsios,, Michael O. Leavitt,, Julie Louise Gerberding,, 5 Summons Returned Executed, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 18 Endorsed Letter,, 17 Notice of Appearance filed by AIDS Action et al.,, 19 Endorsed Letter,, 22 MOTION for Preliminary Injunction. filed by Pathfinder International,, 14 Certificate of Service Other, filed by AIDS Action et al.,, 3 MOTION for Preliminary Injunction. filed by

DATE	DOCKET NUMBER	PROCEEDINGS
		Open Society Institute,, Alliance for Open Society International, Inc.,, 37 Endorsed Letter,, 26 Endorsed Letter,, 43 Declaration in Support of Motion,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 38 Notice of Appearance filed by Open Society Institute,, Pathfinder International,, 47 Stipulation and Order,,, 25 Summons Returned Executed as to USA,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 6 MOTION for Preliminary Injunction Amended Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 9 Stipulation and Order,, 46 Order on Motion to Appear Pro Hac Vice, 44 Endorsed Letter,, 33 Stipulation and Order,, 29 Declaration in Opposition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of

DATE	DOCKET NUMBER	PROCEEDINGS
		Disease Control and Prevention,, Julie Louise Gerberding,, 13 Response in Support of Motion, filed by AIDS Action et al.,, 41 Declaration in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 27 Memorandum of Law in Oppisition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 28 Declaration in Opposition to Motion,, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 31 Declaration in Opposition to Motion,, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,,

DATE	DOCKET NUMBER	PROCEEDINGS
		United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 2 Rule 7.1 Disclosure Statement filed by Alliance for Open Society International, Inc.,, 42 Declaration in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 1 Complaint, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 57 Notice of Appeal, filed by United States Department of Health and Human Services,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, 8 MOTION for Temporary Restraining Order. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 32 Memorandum of Law in Oppisition to Motion, filed by United States Department of Health and Human Services,, Andrew Natsios,, Michael O. Leavitt,, United States Agency for International Development,, United States Centers of Disease Control and Prevention,, Julie Louise Gerberding,, 55 Endorsed Letter,, 50

DATE	DOCKET NUMBER	PROCEEDINGS
		Endorsed Letter,, 53 Preliminary Injunction,, 51 Endorsed Letter,, 40 Reply Memorandum of Law in Support of Motion, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 15 Notice of Appearance filed by AIDS Action et al.,, 11 Endorsed Letter,, 7 Memorandum of Law in Support of Motion filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 56 Endorsed Letter,, 45 MOTION for Richard A. Johnston to Appear Pro Hac Vice. filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 16 Notice of Appearance filed by AIDS Action et al.,, 20 Amended Complaint,, filed by Open Society Institute,, Alliance for Open Society International, Inc.,, Pathfinder International,, 49 Order,, 24 Amicus Curiae Appearance filed by Apne Aap et.al [Amicus],, 54 Endorsed Letter,,, 4 Memorandum of Law in Support of Motion filed by Open Society Institute,, Alliance for Open Society International, Inc.,, 36 Amicus Curiae Appearance filed by InterAction,, 39 Notice of Appear-

DATE	DOCKET NUMBER	PROCEEDINGS
		ance filed by Alliance for Open Society International, Inc. were transmitted to the U.S. Court of Appeals. (nd) (Entered: 10/06/2008)
10/7/08	88	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal for 87 Notice of Appeal, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding USCA Case Number 08-7917, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp) (tp). (Entered: 10/07/2008)
12/23/08	89	ENDORSED LETTER addressed to Judge Victor Marrero from David S. Udell dated 12/23/2008 re: Counsel for Plaintiffs writes requesting that the Court enter the following correspondence into the docket: 12/14/2007 letter from Benjamin Torrance to the Hon. Victor Marrero; 6/23/2008 letter from Rebekah

DATE	DOCKET NUMBER	PROCEEDINGS
		Diller to the Hon. Victor Marrero; and 6/20/2008 letter from Benjamin Torrance to the Hon. Victor Marrero. ENDORSEMENT: Request GRANTED. The Clerk of the Court is directed to enter into the public docket of this action the three letters referred to above and attached to this letter from plaintiffs' counsel. SO ORDERED. (Signed by Judge Victor Marrero on 12/23/2008) (tve) (Entered: 12/23/2008)
12/24/08	90	LETTER addressed to Judge Victor Marrero from Benjamin R. Torrance dated 12/14/08 re: The parties have agreed on the following schedule: Plaintiffs' motion to be served by February 8, 2008; Government's opposition to be served by March 7, 2008; Plaintiffs' reply memorandum. Document filed by United States Agency for International Development, Henrietta Fore, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (mme) (Entered: 12/24/2008)

DATE	DOCKET NUMBER	PROCEEDINGS
12/24/08	91	LETTER addressed to Judge Victor Marrero from Benjamin R. Torrance dated 6/20/08 re: Counsel writes to inform the Court of a recent decision by the Supreme Court of the United States that affects the res judicate argument advanced by the Government in its recent brief opposing plaintiffs motion to amend the complaint. Document filed by United States Agency for International Development, Henrietta Fore, Julie Louise Gerberding, Michael O. Leavitt, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services. (mme) (Entered: 12/24/2008)
12/24/08	92	LETTER addressed to Judge Victor Marrero from Rebekah Diller dated 6/23/08 re: Counsel writes in response to the government defendants letter. Counsel writes to advise the Court that there are no facts to discover here that would give rise to a rejudicatures defense. Document filed by Alliance for Open Society International, Inc., Global Health Council, Pathfinder Interna-

DATE	DOCKET NUMBER	PROCEEDINGS
		tional, Open Society Institute.(mme) (Entered: 01/05/2009)
6/30/09	93	ORDER: It is hereby ordered that plaintiffs inform the Court, by July 8, 2009, of the status of the regulatory proceedings that had been considered arising out of the matters at issue in this litigation, and of plaintiffs' contemplation with regard to further prosecution of this action. In the event no timely response to this Order is received, the Court may dismiss the action without further notice for lack of prosecution. (Signed by Judge Victor Marrero on 6/30/2009) (jpo) (Entered: 06/30/2009)
7/8/09	94	ENDORSED LETTER addressed to Judge Victor Marrero from Laura Abel dated 7/8/09 re: Counsel for Plaintiffs write in response to the Court's Order of 6/20/09, requiring Plaintiffs to "inform the Court, by 7/8/09, of the status of the regulatory proceedings that has been considered arising out of the matters at issue in this litigation, and of plaintiffs' contemplation with regard to further prosecution of this action. ENDORSEMENT: Plain-

DATE	DOCKET NUMBER	PROCEEDINGS
		tiff's are directed to submit to the Court an updated report on the status of this matter within 60 days of the date of this Order, or any earlier date on which material development occurs regarding the matters described above. (Signed by Judge Victor Marrero on 7/8/09) (tro) (Entered: 07/08/2009)
7/20/09		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 7/20/2009. Parties discussed options for closing the case pending administrative review of policies by Government. (mro) (Entered: 07/21/2009)
7/29/09	95	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 7/28/2009 re: Counsel writes to inform the Court that on July 24, 2009 the Court of Appeals entered the parties stipulation to withdraw the government's appeal without prejudice to reinstatement by January 8, 2010. ENDORSEMENT: The Clerk of Court is directed to file this letter in the public docket of this case. So Ordered. (Signed by Judge Victor

DATE	DOCKET NUMBER	PROCEEDINGS
		Marrero on 7/28/2009) (jfe) (Entered: 07/29/2009)
7/29/09	96	MINUTE ORDER PURSUANT TO MEMORANDUM FOR THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, DATED JUNE 15TH, 1973: This case having been pending for more than three years, all presently contemplated proceedings having been completed, and there having been no action for more than twelve months, there appears to be no further reason at this time to maintain this action as open for statistical purposes, the Clerk is instructed to complete a JS-6 closing report for this case. Nothing contained in this minute order shall be considered a dismissal or disposition of this matter, and should further proceedings in it become necessary or desirable, any party may initiate it in the same manner as if this minute order had not been entered. (Signed by Judge Victor Marrero on 7/29/2009) (jfe) (Entered: 07/29/2009)
9/30/09	97	TRUE COPY ORDER of USCA as to 87 Notice of Appeal, filed by United States Agency for Interna-

DATE	DOCKET NUMBER	PROCEEDINGS
		tional Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding USCA Case Number 084917-cv. Order withdrawing appeal by consent without prejudice to reinstatement, the appeal is hereby withdrawn without costs and without attorney's fees and without prejudice, subject to reactivation of the appeal by appellant's counsel by written notice to the Clerk of this Court by 1/8/10. If not thus timely reactivated the appea shall be subject to dismissal. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 9/24/2009. (nd) (Entered: 09/30/2009)
1/6/10	98	ENDORSED LETTER addressed to Judge Victor Marrero from Rebekah Diller dated 1/6/2010 re: Counsel for Plaintiffs write to the Court to provide and updated report on the status of regulatory proceedings related to this matter. ENDORSEMENT: The Clerk of Court is directed to enter this letter

DATE	DOCKET NUMBER	PROCEEDINGS
		and enclosed document in the public record of this action. (Signed by Judge Victor Marrero on 1/6/2010) (tro) (tro). (Entered: 01/06/2010)
1/13/10	99	ORDER of USCA (Certified Copy) as to 87 Notice of Appeal, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding USCA Case Number 08-4917-cv. This appeal was disposed by a so-ordered stipulation withdrawing the appeal when reinstated by the Benjamin H. Torrance counsel for appellants timely submission of notice of that effect. Counsel for the appellants Alliance for Open Society International et al., has submitted a timely notice of reinstatement. IT IS HEREBY ORDERED that the appeal is reinstated. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 1/11/2010. (nd) (Entered: 01/13/2010)
1/15/10	100	ORDER of USCA (Certified Copy) as to 87 Notice of Appeal, filed by

DATE	DOCKET NUMBER	PROCEEDINGS
		United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding USCA Case Number 08-4917-cv. This appeal was disposed of by a so-ordered stipulation withdrawing the appeal when reinstated by the Defendants-Appellants timely submission of notice to that effect. Counsel for the Appellants has submitted a timely Notice of reinstatement. IT IS HEREBY ORDERED that the appeal is reinstated. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 1/14/2010. (nd) (Entered: 01/15/2010)
2/21/12	101	MANDATE of USCA (Certified Copy) as to 87 Notice of Appeal, filed by United States Agency for International Development, United States Centers of Disease Control and Prevention, United States Department of Health and Human Services, Michael O. Leavitt, Henrietta Fore, Julie Louise Gerberding USCA Case Number 08-4917-cv.

DATE	DOCKET NUMBER	PROCEEDINGS
		Ordered, Adjudged and Decreed that the District Court's grant of preliminary injunctive relief is AFFIRMED in accordance with the opinion of this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 02/17/2012. (nd) (Additional attachment(s) added on 2/21/2012: # 1 Opinion) (nd). (Entered: 02/21/2012)
2/21/12		Transmission of USCA Mandate/ Order to the District Judge re: 101 USCA Mandate,,. (nd) (Entered: 02/21/2012)
3/30/12	102	ORDER: With reference to the Mandate of the United States Court of Appeals for the Second Circuit dated February 21, 2012, the parties are directed to inform the Court by April 6, 2012 as to their contemplation regarding any further litigation before this Court, or to settle a final order reflecting a stipulated resolution that could serve as the basis for any further appellate proceedings. (Signed by Judge Victor Marrero on 3/27/2012) (js) (Entered: 03/30/2012)

DATE	DOCKET NUMBER	PROCEEDINGS
4/10/12	103	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 4/6/2012 re: Counsel for the parties write in joint response to the Court's Order, dated March 30, 2012, requiring the parties "to inform the Court by April 6, 2012, as to their contemplation regarding any further litigation before this Court, or to settle a final order reflecting a stipulated resolution that could serve as the basis for any further appellate proceedings." ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Government. So ordered. (Signed by Judge Victor Marrero on 4/10/2012) (rjm) (Entered: 04/10/2012)
5/1/12	104	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 4/24/2012 re: I am writing to inform the Court that the government has sought and obtained from the Supreme Court an extension of time in which to petition for certiorari from the Second Circuit's judgment of

DATE	DOCKET NUMBER	PROCEEDINGS
		July 6, 2011. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Government. So ordered. (Signed by Judge Victor Marrero on 4/28/2012) (rjm) (Entered: 05/01/2012)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 05 Civ. 8209 (VM) (DF)

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., OPEN SOCIETY INSTITUTE, AND PATHFINDER INTERNATIONAL, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT AND ANDREW S. NATSIOS, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANTS

[Jan. 24, 2006]

SUPPLEMENTAL DECLARATION OF DANIEL E. PELLEGROM

I, DANIEL E. PELLEGROM, hereby declare as follows:

1. I am, and have been since 1984, the President of Pathfinder International ("Pathfinder").

2. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction. In particular, I submit this declaration to place into the record Path-

finder's relevant cooperative agreements with defendants United States Agency for International Development ("USAID") and the United States Centers for Disease Control and Prevention ("CDC") as well Pathfinder's subagreements with other organizations to receive funds originating from USAID and CDC.

3. Described below are Pathfinder's current cooperative agreements and subagreements that award funds made available under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act., 22. U.S.C. § 7601 *et seq.* Attached hereto are relevant pages from each agreement or subagreement; the full agreements and subagreements will be submitted upon request.

DESCRIPTION OF EXHIBITS

4. Attached as Exhibit 1 are relevant pages from Cooperative Agreement 388-A-00-02-00060-00 between USAID and Pathfinder, which provides for Pathfinder to support the "NGO Service Delivery Program" in Bangladesh between May 23, 2002 and September 30, 2006.

5. Attached as Exhibit 2 are relevant pages from Cooperative Agreement 527-A-00-04-00109-00 between USAID and Pathfinder, which provides for Pathfinder to upgrade health services, expand contraceptive security, and support health education in Peru between October 1, 2004 and September 30, 2007.

6. Attached as Exhibit 3 are relevant pages from Cooperative Agreement 656-A-00-05-00028-00 between USAID and Pathfinder, which provides for Pathfinder to increase the use of child survival services in the Maputo Province of Mozambique between February 23, 2005 and January 31, 2008.

7. Attached as Exhibit 4 are relevant pages from a "Leader with Associate" Cooperative Agreement GPO-A-00-05-00027-00 between USAID and Pathfinder, which provides for Pathfinder to extend service delivery for a "Reproductive Health and Family Planning Project," which helps families in Sudan space or limit childbearing. The agreement runs between September 30, 2005 and September 29, 2010.

8. Attached as Exhibit 5 are relevant pages from Cooperative Agreement 623-A-00-06-00013-00 between USAID and Pathfinder, which provides for Pathfinder to provide home-based care and HIV/AIDS education in Kenya between December 31, 2005 and August 30, 2006.

9. Attached as Exhibit 6 are relevant pages from Cooperative Agreement U62/CCU124490-0l between the CDC and Pathfinder, which provides for Pathfinder to provide home-based care in Tanzania from September 1, 2004 to August 31, 2009.

10. Attached as Exhibit 7 are relevant pages from Cooperative Agreement U62/CCU124501-01 and Amended Cooperative Agreement U62/CCU124501-01-1 between Pathfinder and CDC; which provides for Pathfinder to prevent the transmission of HIV/AIDS from mothers to their children in Kenya between September 30, 2004 and March 31, 2010.

11. Attached as Exhibit 8 are relevant pages from Cooperative Agreements U62/CCU124418-02 and U62/CCU124419-02 between Pathfinder and CDC, which provides for Pathfinder to provide psychosocial support and peer counseling for HIV-infected women and their families in Botswana between September 30, 2004 and September 29, 2009.

12. Attached as Exhibit 9 are relevant pages from Cooperative Agreement U62/CCU124490-02 between Pathfinder and CDC, which provides for Pathfinder to provide home-based care in Tanzania between September 1, 2004 and August 31, 2009.

13. Attached as Exhibit 10 are relevant pages from a subagreement between Pathfinder and Christian Children's Fund Kenya, which provides for Pathfinder to support orphans and other children affected by HIV/AIDS in Kenya. The agreement runs between between March 18, 2005 and September 30, 2006. Christian Children's Fund Kenya holds the Prime Cooperative Agreement with USAID (GPO-A-00-05-00016-00).

14. Attached as Exhibit 11 are relevant pages from a subagreement between Pathfinder and Family Health International which provides for Pathfinder to establish and support community based HIV/AIDS prevention programs in Kenya through January 31, 2006. Family Health International holds the Prime Cooperative Agreement with USAID (HRN-A-00-97-0017-00).

15. Attached as Exhibit 12 are relevant pages from a subagreement between Pathfinder and EngenderHealth, which provides for Pathfinder to prevent the transmission of HIV/AIDS from mothers to their children in three communities in the Arusha region of Tanzania between July 1, 2005 and June 30, 2006. EngenderHealth holds the Prime Cooperative Agreements with USAID (GPH_A_00-02-0001 1-00 and 623-A-00-03-00069-00).

16. Attached as Exhibit 13 are relevant pages from a Subagreement between Pathfinder and Pact, Inc., which provides for Pathfinder to improve Sexually Transmitted Infection ("STI") and HIV support services in the public

and private sectors in Vietnam between August 30, 2005 and August 29, 2006. Pact, Inc. holds the Prime Cooperative Agreement with USAID (GPH-A-00-01-00-00007-00).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan. [24], 2006
Watertown, Massachusetts

/s/ DANIEL E. PELLEGROM
DANIEL E. PELLEGROM

Exhibit 5

[SEAL OMITTED]
USAID KENYA
FROM THE AMERICAN PEOPLE

December 31, 2005

Mr. Charles Thube
Pathfinder International
Mezzanine Floor, International House
Mama Ngina Street
P.O. box 48147-00100
Nairobi, Kenya

Subject: Cooperative Agreement 623-A-00-06-00013-00

Dear Mr. Thube:

Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the U.S. Agency for International Development (hereinafter referred to as "USAID" or "Grantor") hereby grants to Pathfinder International (hereinafter referred to as "Pathfinder" or "Recipient"), the sum of $2,570,800 to provide support for the implementation of the "COPHIA II", as described in Attachment 1, entitled "Schedule" and Attachment 2, entitled "Program Description" of this award.

This award is effective and obligation is made as of the date of this letter and shall apply to commitments made by the Recipient in furtherance of program objectives during the period beginning with an Effective Date of same date as this letter and Estimated Completion Date of August 30, 2006. USAID shall not be liable for reim-

bursing the Recipient for any costs in excess of the obligated amount.

This award is made to Pathfinder on condition that the funds will be administered in accordance with the terms and conditions as set forth in 22 CFR 226, entitled "Administration of Assistance Awards to U.S. NonGovernmental Organizations"; Attachment 1, entitled "Schedule", and Attachment 2, entitled "Program Description" and "The Mandatory and Required As Applicable Standard Provisions", Attachment 3.

In the space provided below, please sign the original and each copy of this letter to acknowledge your acceptance of this award and return the original and all but one copy to the Agreement Officer.

Sincerely,

/s/ GARY JUSTE
GARY JUSTE
Regional Agreement Officer
USAID/REDSO/EAA

Attachments
1. Schedule
2. Program Description

The terms of this Agreement are acceptable to the Recipient:

BY: /s/ [CHARLES THUBE]

TITLE: [COUNTRY REPRESENTATIVE]

DATE: [JANUARY 3, 2006]

* * * * *

Associate Cooperative Agreement 623-A-00-06-0013-00

II. Limitation on the Use of Funds

The following must be included in the Standard Provisions of any grant or cooperative agreement or subagreement funded with FY04-FY08 HIV/AIDS funds with a U.S. nongovernmental organization, non-U.S., non-governmental organization or public international organizations.

"PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (ASSISTANCE) (JUNE 2005)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(b) Except as noted in the second sentence of this paragraph, as a condition of entering into this agreement or any subagreement, a non-governmental organization or public international organization recipient/subrecipient must have a policy explicitly opposing prostitution and sex trafficking. The following organizations are exempt from this paragraph: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organiza-

tion; the International AIDS Vaccine Initiative; and any United Nations agency.

(c) The following definition applies for purposes of this provision: Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

(d) The recipient shall insert this provision, which is a standard provision, in all subagreements.

(e) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action Case No.:

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., AND OPEN SOCIETY INSTITUTE, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ET, AL., DEFENDANTS

[Aug. 16, 2006]

DECLARATION OF RUTH W. MESSINGER

---

1. I serve as the President and Executive Director of American Jewish World Service (AJWS), a humanitarian organization providing non-sectarian grassroots development and emergency relief to people in developing nations. Our organization is working, among other things, to stop the spread of HIV/AIDS in various countries overseas.

* * * * *

3. In my capacity as President and Executive Director of AJWS, I have administered our organization's HIV/AIDS prevention programs. AJWS provides approximately $1.2 million annually to fifty-nine grassroots organizations in Africa, Asia and Latin America

carrying out integrated programming to address the HIV/AIDS pandemic. The programs include peer-led prevention efforts, care and support for people living with HIV/AIDS and orphans and vulnerable children, advocacy campaigns for access to and education about anti-retroviral treatment, and anti-stigma work. AJWS supports local groups and associations of people living with HIV that are devising effective and innovative strategies to limit the spread and mitigate the effects of HIV/AIDS in their communities.

* * * * *

8. American Jewish World Service has never had a policy on prostitution. As an international development and human rights organization, we generally do not adopt policies on particular political issues. Especially since we operate in a variety of African, Asian, and Latin American countries, providing services to clients from multiple cultures and backgrounds even within each particular country, we make every effort to remain neutral on issues of political or cultural conflict.

9. American Jewish World Service does not wish to adopt a policy on prostitution, and believes that it would be harmful to our organization to do so. AJWS would not consider adopting a policy but for the U.S. government's policy.

10. By compelling us to speak in order to continue receiving USAID funding, this mandate harms our organization's First Amendment rights. It further violates those rights by imposing limits on our *private*, non-federally-funded speech and activities. While USAID funding comprised approximately 5 percent of our budget for HIV/AIDS prevention and care work in 2004/2005,

all of our work would be subject to the policy mandate. Because USAID seeks to force us to adopt this policy, we are concerned that we will be forced to ensure that even our non-USAID-funded work conforms to what would be an organization-wide mandate.

11. Finally, our organization is harmed because we would be forced to give up the right to even engage in debate about significant matters of public health that may relate to prostitution, *even when that debate is funded by wholly private funds*. For example, we often study the efficacy of our work and the work of partner organizations in the field in order to determine what approaches work best at preventing HIV, so that we and others can replicate those models. With the newly-mandated USAID policy outlined in AAPD 05-04, we would be constrained in the conclusions that we can reach.

12. We are also deeply troubled by the vagueness of the requirement. We are certainly not "pro-prostitution." However, we have received no guidance from USAID as to what it means to be opposed to prostitution. For instance, in Thailand AJWS supports an organization that provided relief and vocational training for sex workers affected by the Tsunami. In India, we support an organization that provides evening care for the children of prostitutes, and in Kenya we support an organization that provides AIDS prevention and care for sex workers. We are unclear as to how our support for the critically important AIDS prevention and care work of these organizations, representing diverse opinions on the debate over legalization of prostitution, would be perceived by USAID.

* * * * *

14. Compelling us to adopt this policy to obtain future funding is also harmful because, due to the policy, our organization may be seen as one that stigmatizes vulnerable and marginalized sex workers, and our ability to offer meaningful help to that population will likely be compromised. We know from experience that the challenges of reaching sex workers are vast. The programs that have been most successful in reaching out to sex workers to prevent the spread of HIV have been those that approach sex workers not with a message of condemnation of the situations in which the men and women find themselves but rather in a non-judgmental fashion designed to address their health and other needs.

* * * * *

Pursuant to 28 U.S.C. § 1746, I swear or affirm, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge.

/s/ RUTH W. MESSINGER
RUTH W. MESSINGER

New York, New York
DATED this 16 day of Aug., 2005

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., ET AL., PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANTS

[Feb. 4, 2008]

DECLARATION OF SAM WORTHINGTON

I, SAM WORTHINGTON, hereby declare as follows:

1. I am the President and Chief Executive Officer of InterAction: The American Council for Voluntary International Action ("InterAction"). I have held that position since October 2006. I previously served as Chief Executive Officer of Plan USA, a global, 62-country, child-focused development organization.

* * * * *

4. InterAction was founded in 1984 with the purpose of convening and coordinating U.S.-based, non-governmental organizations ("NGOs") that work in the fields of international development and humanitarian aid. InterAction's mission is to assist its members in improving their own practices and to advocate for policy

issues that affect its members and the millions of people they serve worldwide. With one hundred and seventy members, InterAction is the largest alliance of United States-based international development and humanitarian non-governmental organizations.

5. Interaction's members, all of which are not-for-profit, tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code, are headquartered in twenty-five states, including New York. InterAction member organizations are both faith-based and secular and operate in every country in the developing world. Member organizations foster economic and social development; promote public health; provide relief to those affected by disaster and war; assist refugees and internally displaced persons; advance human rights; support gender equality; protect the environment; address population concerns; and press for more equitable, just, and effective government policies.

6. InterAction realizes its mission by providing a forum for professional consultation, coordination, and concerted action. Committees and their working groups, composed of InterAction members, engage in dialogue and advocacy with government agencies such as Defendants United States Agency for International Development ("USAID") and Department of Health and Human Services ("HHS") to improve the effectiveness of U.S. foreign assistance and promote policy solutions to eradicate poverty and disease, including HIV/AIDS. InterAction has developed considerable expertise in working with public and private partners to further its members' global health initiatives and objectives.

7. InterAction's member organizations receive more than $1 billion annually from the United States Government, primarily through Defendant USAID although they also receive funds from Defendants United States Department of Health and Human Services ("HHS") and United States Centers for Disease Control and Prevention ("CDC") (collectively "HHS"). A portion of those funds is for programs authorized by the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("Global AIDS Act").

8. InterAction member organizations also receive more than $7 billion in annual contributions from private individuals, foundations, and corporations. Some also receive funds from United Nations agencies, the World Bank, the European Community Humanitarian Office, and national governments, including those of the United Kingdom and France.

* * * * *

How the Policy Requirement And Guidelines Harm InterAction and its Members

21. The policy requirement continues to harm InterAction and its members in a number of ways, which the guidelines have only perpetuated.

a. Compelled Speech

22. First, the policy requirement forces international NGOs that generally prize their independence from government to become a mouthpiece for the U.S. government's position on a particular social issue. For these members, the adoption of a government-mandated, organization-wide policy on this or any issue violates dear-

ly held principles of independence that are fundamental to their operation as non-governmental organizations.

23. The guidelines do nothing to remedy this problem. Even if members were able to cordon off some privately funded activity to a legally, financially, and physically separate affiliate, as the guidelines contemplate, the NGO that receives Global AIDS Act funds would still be forced to adopt an organizational policy that would undermine its independence and force it to parrot the government's message as its own.

24. Moreover, due to separate rules that require USAID grantees to have substantial private funding, the grantee NGO would still possess some degree of private funds that would be subject to the policy requirement. U.S.-based private voluntary organizations must be registered with USAID in order to be eligible for USAID funding. *See* 22 C.F.R. § 203.1(a). In order to register as a private voluntary organization, an NGO must "solicit[] and receive[] cash contributions from the U.S. general public." *id* § 203.3(b). Therefore, even if InterAction members were able to set up separate affiliates—an unviable proposition for the reasons I explain below—the policy requirement would always reach some portion of InterAction members' private funds.

b. Viewpoint Discrimination

25. Second, the policy requirement continues to force InterAction members who wish to remain neutral on the issue of prostitution to take a government-mandated position. Many members believe that prostitution causes serious health, psychological, and physical risks for women and work to address those risks and assist women in finding alternatives. However, they also believe

that by forcing them to explicitly oppose prostitution, the policy requirement stigmatizes one of the very groups whose trust they must earn to conduct effective HIV/AIDS prevention and forces them to approach those engaged in prostitution in what will be perceived as a judgmental manner.

26. Many members are aware that Defendants have construed the policy requirement as prohibiting advocacy for the elimination of criminal penalties against women engaged in prostitution. Given the variety of legal regimes relating to prostitution in the countries in which InterAction members operate, some members object to the mandatory adoption of a policy position that contradicts the policy of some of the countries in which they are operating.

27. The guidelines do not remedy this problem. An independent, non-profit member organization still must adopt a particular position in order to be eligible for Global AIDS Act funding and, as described above, even if some private funds were segregated to create an affiliate, the grantee organization would still possess private funds encumbered by the policy requirement.

c. The Guidelines Massively Burden Private Speech

28. The third way in which the policy requirement and guidelines harm InterAction and its members is that members engage in a significant amount of activity not funded by the U.S. government that could be barred by Defendants' overly broad construction of the policy requirement. The Defendants' ban on the use of the non-U.S. government funds possessed by InterAction members to do work that Defendants construe as being insufficiently opposed to prostitution restricts members

from engaging in speech and HIV-prevention activities with their private funds.

29. Members have expressed concern about the policy requirement's impact on their commitments to private funders to do HIV/AIDS prevention work. For example, the policy requirement has threatened the privately funded HIV/AIDS prevention work of InterAction member CARE with sex worker organizations and networks. In a letter dated July 15, 2005 to the Hon. Andrew Natsios, Representative Souder and 27 other members of Congress accused InterAction member CARE of violating the pledge requirement by promoting a "rights-based" approach to prostitution, which the signatories equate with advocacy for the legalization of prostitution and its cultural acceptance as a legitimate form of employment. In the same letter, the members of Congress also accused InterAction member International Center for Research on Women of holding a "pro-prostitution" stance. A copy of this letter is attached hereto as Exhibit B. In a subsequent letter dated December 7, 2005 to the Hon. Andrew Natsios, Rep. Souder again accused CARE of violating the policy requirement by providing funding to an Indian organization that he said advocates for the decriminalization of adult sex work. A copy of this letter is attached hereto as Exhibit C. As the accompanying Declaration of Helene Gayle, President and Chief Executive Officer of CARE, in support of this motion, attests, in June 2006, after the issuance of the Court's decision holding that the policy requirement was unconstitutional as applied to AOSI and Pathfinder, USAID officials made inquiries to CARE about its association with this organization, to

which CARE provides private funding in connection with a tuberculosis prevention program.

30. Similarly, as the accompanying Declaration of Dan Pellegrom, President of InterAction member Pathfinder International, in support of this motion attests, if Pathfinder were not protected by the preliminary injunction in this case, it might have to censor discussions of its privately funded program that conducts HIV/AIDS prevention with sex workers in India as well as the speech of a privately funded Brazilian employee who is slated to facilitate discussions at Brazil's upcoming National Consultation on Prostitution, HIV/AIDS and Human Rights.

31. The inability of InterAction members to speak freely about the lessons of their work undercuts several of InterAction's main purposes as a membership organization. Through an annual conference, frequent meetings, working groups, and publications, InterAction members share best practices and lessons learned from their humanitarian work. However, discussion about the relationship between HIV and prostitution as well as best practices for HIV prevention among sex workers cannot be held freely due to the policy requirement.

32. The guidelines do not fix this problem. Although the guidelines purport to create an opportunity for grantees to engage in forbidden speech through a legally, financially, and physically separate affiliate, they impose such massive burdens on the creation of the affiliate that it is not a viable option for our members.

33. Creating a legally separate affiliate in the international context is a far different proposition from creating one domestically. Most countries in which InterAction members operate have requirements that all NGOs reg-

ister with the government in order to operate. An InterAction member that operates in twenty countries, who wished to speak freely through an affiliate, would have to navigate lengthy and cumbersome registration processes in each of those countries in order to create a functioning, legally separate entity. In almost all cases, local counsel would have to be hired in each country in which the member sought to register the affiliate, making the process quite costly.

34. It is far from certain that a member would even be able to obtain approval for an affiliate in multiple developing countries. InterAction members frequently report long delays and difficulties in registering in various developing countries. For example, it recently took InterAction member Mercy Corps ten months to register an entity in Jordan to provide urgently needed relief to Iraqi refugees. Another InterAction member, International Medical Corps, had its application for registration denied by the Jordanian Ministry of Social Development in November 2007.

35. If a member were somehow able to obtain permission to operate an affiliate in multiple countries, that affiliate would have a very hard time obtaining funding. If the new affiliate were to be government-funded, it would likely be barred from USAID funding opportunities until it had a record of achievement. *See* 22 U.S.C. § 2151u(a) (organization not eligible to receive funds until it has "demonstrated a capacity to undertake effective development activities."); 22 C.F.R. § 203.3(f)(4) (requiring entity to have been incorporated for at least 18 months in order to register as a private voluntary organization eligible for USAID funding). If the new affiliate were to be privately funded, it would be at a severe dis-

advantage competing with other organizations for non-U.S.-government funding because it would have no track record whatsoever.

33. Even if an InterAction member were able to jump these hurdles and register and fund an affiliate in multiple countries, the affiliate would be a completely separate entity from the InterAction member. The guidelines require that the affiliate be governed by a separate board and run by separate management. For non-profit organizations, as all of our members are, the board of directors generally controls and speaks for the organization. This principle is embodied in InterAction's Private Voluntary Organization Standards, with which all InterAction members must certify compliance every two years. Those standards provide that a member's board must act as the organization's governing body, accepting responsibility for oversight of all aspects of the organization. Thus, an InterAction member organization will not be able to speak through a separate entity that has a separate board of directors.

36. The requirement of separate personnel also poses unique difficulties in the international setting. Most field offices our headed by "country representatives," who ideally have experience working in the region and in the NGO's programming areas. Very often, an NGO will need to hire the country representative and other senior staff with relevant expertise from outside the country in which the field office is based. To do so, an NGO will have to navigate local visa requirements. Often, visa applications cannot even be started until after an NGO has registered in a country. In many countries, the process requires an NGO to hire a local attorney and show that it could not find any country residents qualified for

the position. The requirement to operate a separate affiliate would double the burdens of these laws on our members.

37. The requirement of separate bank accounts poses similar burdens. Many countries have rules that make it difficult to open a new bank account without specific government authorization and approval. Often, if an official from an NGO's headquarters wants to be a signatory to the account, he will have to travel in person to the bank. Opening a separate account for a new entity will thus entail its own lengthy process.

38. Finally, the requirement of separate physical facilities, equipment and supplies additionally burdens our members. In many developing countries where InterAction members operate, members must import computers, printers, networking supplies and other office equipment. To do so for a second office would not only be expensive, but would also require NGOs to navigate cumbersome local customs laws for a second time. In addition, all of these requirements would divert funds that should be spent saving lives in the developing world into unnecessary, duplicate administrative costs.

39. All of these requirements run counter to our members' efforts to run foreign aid operations efficiently and with as little administrative overhead as possible. Members are often judged by their donors on the percentage of funds that go directly toward service. InterAction's itself, in its Private and Voluntary Organization Standards, which were designed to ensure and strengthen public confidence in the integrity, quality, and effectiveness of member organizations and their programs, requires members' combined fundraising and administra-

tion costs to be kept to the minimum necessary to meet the agency's needs. Allocations of expenditures to administration, fundraising, and program services shall reflect the organization's purposes and actual activities, the standards further provide. The requirement to squander funds on duplicate registrations, bank accounts, staff, offices, equipment and supplies—solely in order to be able to speak freely on an issue of public policy—flies in the face of this principle.

40. In addition, all of these requirements are likely to draw suspicion from local authorities who will not understand why an organization that already operates in a country now must do so through a legally separate entity, with separate personnel, with separate bank accounts, and out of separate offices.

Vagueness

41. The fourth way in which the policy requirement harms InterAction and its members is its unresolved vagueness. From the beginning of the policy requirement's implementation, members have been unsure of what activities and speech they may and may not engage in.

42. Members have reported a wide variety of responses by organizations and USAID officials to the policy requirement. Some members have reported that local USAID missions in countries in which they operate have demanded to see their policies opposing prostitution while others have reported that missions did not demand to see their policies. Some members have reported that, in the absence of guidance from the Defendants, primary recipients of U.S. government funds have inserted

their own language into subcontracts about what constitutes compliance with the policy requirement.

43. After operating in this uncertain environment for more than two years, the humanitarian community had hoped that the guidelines would finally provide some clarity. But the guidelines have failed to answer the most basic questions about just what activities and speech are restricted.

44. In addition, while the guidelines require "physical[] and financial[] separation" of funding recipients from the affiliated organizations, they do not provide clear guidance regarding what will be considered physically and financially separate enough. For example, USAID states one factor it will examine is "[t]he extent to which USAID, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conferences and press or public statements." Yet USAID gives no indication of how it will assess "public association." Similarly, USAID states it will examine "[t]he extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present and signs and materials that could be associated with the affiliated organization or restricted activities are absent." Again, the guidelines give InterAction members no guidance on how much usage would be enough to satisfy this requirement.

45. Given the severe consequences for violating the policy requirement, in the absence of such guidance, members will have to ensure maximum separation to avoid any possibility of running afoul of the guidelines.

Moreover, they will now have to scrutinize very carefully their relationships with collaborating organizations and grantees to determine whether they are closely affiliated enough to raise questions about whether the other organization's views may be attributed to the member.

46. For all these reasons, the anti-prostitution policy requirement continues to irreparably harm InterAction and its members.

47. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb. 4, 2008
Washington, District of Columbia

/s/ SAM WORTHINGTON
SAM WORTHINGTON

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., AND OPEN SOCIETY INSTITUTE, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANT

[Aug. 12, 2005]

DECLARATION OF MAURICE I. MIDDLEBERG

I, MAURICE I. MIDDLEBERG, hereby declare as follows

1. I currently serve as the Acting President of EngenderHealth. EngenderHealth is a private, non-governmental, non-profit, non-sectarian organization whose mission is to ensure that reproductive health services—including family planning, maternal health and HIV/AIDS—are safe, available and sustainable in developing nations. EngenderHealth currently has programs in nineteen developing countries. In fulfilling its mission, EngenderHealth provides technical assistance, training, and information to improve services where resources are scarce. Approximately 75% of its $49 million budget consists of funds from the U.S. Agency for In-

ternational Development (USAID), with the remainder from private and multilateral sources (such as United Nations agencies). EngenderHealth is a membership organization, with approximately 10,000 individual members.

* * * * *

3. In my capacity as Acting President and Executive Vice President of EngenderHealth, I have over-all responsibility for EngenderHealth's programs, including our HIV/AIDS program. EngenderHealth's HIV/AIDS program focuses on a broad spectrum of HIV prevention, care, and treatment strategies. EngenderHealth works with its overseas partners to introduce and improve management of sexually transmitted infections, voluntary HIV counseling and testing, prevention of mother-to-child transmission, infection prevention, HIV care and support, counseling of pregnant and postpartum women, and HIV prevention counseling. We facilitate communication between health providers and the communities they serve to ensure services are responsive to the needs, concerns and perceptions of clients. EngenderHealth also works with providers to overcome fears and biases that can result in stigma and discrimination, which can limit access to and quality of care for those who need it most. Underlying all of EngenderHealth's approaches is an emphasis on the rights and needs of all clients, particularly those living with HIV/AIDS.

4. Some of the projects in our organizational HIV/AIDS portfolio are funded in whole or in part by USAID. Others are funded by private donors, the Glob-

al Fund to Fight AIDS, Tuberculosis and Malaria and agencies of the United Nations.

5. Under the terms of USAID Acquisition and Assistance Policy Directive (AAPD) 05-04, EngenderHealth is required to certify that the organization has a policy "explicitly opposing prostitution and sex- trafficking" as a condition to receiving USAID funds, including funding for on-going projects. This mandated policy will necessarily apply to the entire organization, irrespective of whether the source of funds for a particular project is the U.S. Government, a private donor or a multilateral institution.

* * * * *

7. On July 14, 2005, EngenderHealth received a letter from USAID demanding that we sign a certification stipulating that we were in compliance with AAPD 05-04 and that this certification be returned by fax "as soon as possible" (underlining appears in the original). (Exh. B). EngenderHealth's receipt of $1.6 million to support an HIV/AIDS program in Kenya that strengthens prevention of maternal-to-child transmission of HIV and voluntary counseling and testing services was made conditional on signing the certification.

8. On July 27, 2005, subsequent to the adoption of an organizational policy on prostitution and trafficking, I signed the certification. The certification was transmitted to USAID with a cover letter expressing our concerns about the legality and programmatic impact of the certification requirement. (Exh. C). As set forth in the letter, EngenderHealth signed the newly required certification with great reluctance.

* * * * *

10. In a letter dated February 25, 2005, I joined the leaders of thirteen major health and humanitarian organizations in a letter to Mr. Randall Tobias, Coordinator of the U.S. Global AIDS Program, a program of the State Department, protesting the proposed implementation of what was to become AAPD 05-04. In that letter, we pointed to both the potential harm of the pending policy to our individual and collective mission, as well as to the dubious legality and constitutionality of the effort to compel speech. (Exh. D).

* * * * *

13. Cognizant of the wide diversity of cultures, legal systems and beliefs in the many countries in which we work, EngenderHealth is extremely circumspect in adopting public policy positions that may impede our ability to carry out our mission effectively. When and if the organization chooses to adopt an organizational position on a matter of health policy, it is only after intensive study and extensive consultation that can last months or years. EngenderHealth would never adopt a policy on a highly controversial issue with the extraordinary and unseemly haste demanded by USAID, were it not for the coercion and compulsion of having funding for our life-saving HIV/AIDS programs being withheld.

14. Prostitution is an example, *par excellence*, of the controversies in the reproductive health field. For many activists and public health professionals, the very term prostitution is offensive and alternative terms, such as "sex work", are preferred. The U.S. Government's policy on prostitution as applied to other nations is highly controversial. For example, the U.S. position on prosti-

tution has been the subject of a bitter controversy between Brazil and the United States. The Government of Brazil has returned a $40 million grant to the United States rather than accommodate U.S. policy and the Brazilian Ministry of Health has condemned U.S. policy in very harsh terms. (*see* Exh. E).

15. In Brazil, EngenderHealth has a project aimed at preventing maternal-to-child transmission of HIV/AIDS that is funded by the United Nations Population Fund. Absent the compulsion of AAPD 05-04, EngenderHealth would not have taken a position on the legal status of prostitution or issued a statement "explicitly opposing prostitution", as doing so may risk alienating our Brazilian hosts, our United Nations donor, or USAID. Countries in which EngenderHealth works have widely varying laws, regulations and *de facto* regimes governing "prostitution", from highly tolerant to harshly punitive. EngenderHealth does not wish to condone or condemn any particular approach at this time. Because controversy on the legal and *de facto* status of prostitution may erupt between the United States and other countries, EngenderHealth wishes to have the option of not expressing a position on this issue at this time.

16. EngenderHealth is fully cognizant of the serious physical and psychological risks associated with sex work and deplores the exploitation of people in all its forms, including trafficking. Nonetheless, EngenderHealth believes that USAID's application of Section 301(f) to U.S. based organizations will be detrimental to the mission of EngenderHealth for the following reasons:

a. Section 301(f) of Pub. L. No. 108-25 demands a "policy explicitly opposing prostitution." However, Section 301(f) does not address the root causes of vulnerability that force or lead men and women into sex work. EngenderHealth is morally opposed to condemning the outcome of vulnerability without addressing its root causes. *Inter alia*, these root causes include the failure of nation-states to ratify and fully implement the relevant human rights and protections for women and children articulated in international conventions and agreements, including the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights Of the Child, the Programme of Action adopted at the Fourth World Conference on Women and the Programme of Action adopted at the 1994 International Conference on Population and Development. EngenderHealth's view is that a morally legitimate stance opposing sex work would necessarily entail a full exploration of the root causes of vulnerability, which may lead to a critique of the behaviors of certain nation-states, including the United States. The USAID demand that EngenderHealth sign the certification immediately precludes the necessary exploration of the relevant issues, nor is EngenderHealth prepared to engage in a full exploration and exposition of this complex subject. As a result, USAID is compelling EngenderHealth to articulate a position that we view as intellectually limited and morally suspect.

b. The policy statement demanded by USAID is necessarily a public document. EngenderHealth is concerned that by issuing a public statement it will contribute to further stigmatizing sex workers. Stig-

matizing people perceived as engaging in high risk behavior has been a major contributor to the spread of HIV/AIDS. Stigma has suppressed education and driven people away from services. Sex workers are a very difficult population to reach, precisely because they have been so widely stigmatized. The impact of issuing a policy statement opposing prostitution may be to ally EngenderHealth with the stigmatization of sex workers and their clients. This is not an appropriate posture for a public health organization like EngenderHealth. As a public health organization, our duty is to prevent, mitigate and treat risks to health. This requires adopting a non-judgmental posture with regard to our clients. USAID should not compel EngenderHealth to issue a statement that we believe will contribute to exacerbating stigma.

c. Notwithstanding provisions in the legislation that make USAID funded services available on a non-discriminatory basis, EngenderHealth is concerned that implementation of AAPD 05-04 will have a harmful affect on the scope of programs. EngenderHealth supports a basic package of essential health services, without discrimination against sex workers. Based on long experience, EngenderHealth is highly concerned that USAID Missions, host governments, local organizations and our own staff will avoid developing or supporting innovative programs for sex workers that may be construed as inadequately "anti-prostitution", rather than risk losing USAID funding.

d. AAPD 05-04 serves to chill, if not virtually preclude, legitimate debate on the legal and health regimens governing sex work that most advance public health. Countries have experimented with a wide

range of legal and health approaches to sex work. EngenderHealth's staff, as public health professionals, have the right to objectively examine these various approaches, to assess the evidence on their outcomes and to present recommendations based on the evidence. Public health professionals have the right, indeed obligation, to then advocate for the legal and health strategies they believe most advance public health. The effect of AAPD 05-04 is to forbid the debate. EngenderHealth takes no position as to the legal regimen governing sex work that will most advance public health. However, we assert the right to review the evidence at a time of our own choosing and to draw our own conclusions accordingly, without having the U.S. Government pre-determine our opinions. Section 301(f) and AAPD 05-04 require that our staff censor themselves when making public statements and monitor the issuance of written reports to ensure that all of these representations are sufficiently "opposed to prostitution".

17. Section 301(f) and AAPD 05-04 are so vague that they render EngenderHealth subject to quixotic, capricious and arbitrary denial of funding:

a. Neither definition as to what would constitute an acceptable "explicit policy" nor stipulation of the criteria against which USAID will assess organizational policies are provided. There is no specific guidance from USAID that would help us understand their minimum requirement. It is therefore difficult to know what language or keywords must be in the policy to pass USAID's implicit test. This imposes an unreasonable burden on EngenderHealth to guess as

to what would constitute an acceptable policy statement.

b. AAPD 05-04 requires that EngenderHealth impose the certification requirement on sub-grantees and sub-contractors. It will, in our understanding, be the responsibility of EngenderHealth to monitor sub-grantee and sub-contractor compliance with the certification. However, it is very unclear as to how we are to assess compliance, just as it is unclear as to how USAID will monitor EngenderHealth's compliance. Of particular concern is the implication that we are to monitor the policy statements, writings and speech of partner organizations. This poses an unreasonable burden on EngenderHealth.

c. EngenderHealth is expected to "explicitly oppose" prostitution. Unfortunately, there is no commonly accepted definition of prostitution. No international convention, treaty or law defines the term. Because of the extreme diversity of cultural contexts and circumstances in which transactional sex occurs, it has proven impossible for diplomats and legal scholars to arrive at an agreement. In most countries, prostitution is not outlawed; rather, it is the ancillary activities such as pimping and soliciting that are illegal. EngenderHealth is being asked to oppose an act that remains undefined as a matter of international law and whose definition varies very widely in the countries in which we work. Therefore, its application and enforcement are inherently vague and create an unreasonable burden.

18. EngenderHealth has never had a policy on prostitution in the past. EngenderHealth does not wish to

adopt a policy on prostitution, and believes that it will be harmful to our organization to do so for the reasons given above. EngenderHealth would not adopt such a policy, but for the fact that the U.S. Government has compelled us to do so to continue to obtain USAID funds for our existing HIV/AIDS programs, as well as for new programs.

* * * * *

20. AAPD 05-04 harms EngenderHealth's First Amendment rights by imposing limits on our private, non-federally-funded speech and activities. Because USAID has compelled EngenderHealth to adopt a policy statement, we must ensure that work funded from private or multilateral sources conforms to the new organizational mandate. A principal virtue of receiving private funds is that it permits EngenderHealth to engage in innovative, experimental and potentially controversial programs, as well as to articulate positions on controversial issues, unfettered by the constraints of federal funding. EngenderHealth views its private funds, especially unrestricted gifts, as qualitatively different than federal grants. Private funds allow EngenderHealth to implement programs or express views that the U.S. Government would not support or may oppose. AAPD 05-04 robs EngenderHealth of the possibility of lawfully using private funds to carry out activities or express views with which the Government disagrees.

* * * * *

22. Section 301(f), as interpreted by the Department of Justice, and AAPD 05-04, create a highly threatening precedent. If the U.S. Government's position is upheld, it will have the right to demand that recipient organizations adopt policy statements on virtually any issue. Given the highly controversial nature of reproductive health, as de-

scribed above, this will inevitably lead to a Government-dictated ideology of reproductive health to which private organizations must swear fealty as a condition of carrying out life-saving and humanitarian programs, irrespective of the source of funds. This would fundamentally undermine EngenderHealth's status as an independent, non-governmental organization.

* * * * *

Pursuant to 28 U.S.C. § 1746, I swear or affirm, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge.

New York, New York
DATED this 12 day of Aug., 2005

/s/ MAURICE I. MIDDLEBERG
MAURICE I. MIDDLEBERG
Acting President
EngenderHealth

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 05-CV-8209 (VM) (DF)

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., ET AL., PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANTS

[Jan. 25, 2008]

DECLARATION OF PAPE GAYE

I, PAPE GAYE, hereby declare as follows:

1. I am, and have been since August 2004, the President of IntraHealth International, Inc. ("IntraHealth").

* * * * *

3. IntraHealth International Inc. ("IntraHealth") is a nonprofit corporation incorporated under North Carolina law. It enjoys tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 6340 Quadrangle Drive, Suite 200, Chapel Hill, North Carolina 27517. IntraHealth also maintains offices and/or fields project staff in Armenia, Guatemala, Guinea, Eastern Caribbean, Ethiopia, India, Kenya, Le-

sotho, Mali, Namibia, Rwanda, Senegal, South Africa, Southern Sudan, Swaziland, Tanzania, Uganda, Vietnam, and Zambia.

* * * * *

5. IntraHealth's mission is to mobilize local talent to create sustainable and accessible health care. Our vision believes in a world where all people have an equal opportunity for health and well being. IntraHealth pursues this mission and vision by strengthening systems that support health care providers, fostering links among health care providers, clients and communities, improving education and training programs for the health care workforce, and delivering front-line health services and referrals at the community level.

6. IntraHealth has developed considerable expertise in promoting family planning and reproductive health and in combating HIV/AIDS and other sexually transmitted infections. IntraHealth's HIV/AIDS programs train providers in clinical skills, support providers to reach underserved populations with antiretroviral therapy (ART) and other therapies, treatments, and care, promote voluntary HIV counseling and testing, and prevent the mother-to-child transmission of HIV and integrate HIV/AIDS services into family planning and reproductive health services.

7. IntraHealth's annual budget, which in fiscal year 2008 totals approximately $64.7 million, is funded by grants and donations from multiple sources, including Defendants United States Agency for International Development ("USAID") and the United States Centers for Disease Control and Prevention ("CDC"), an operating agency of Defendant Department of Health and Human

Services ("HHS"). IntraHealth also receives contributions from private foundations and individuals. IntraHealth has received funds from multilateral organizations such as the United Nations Population Fund and currently receives funding from the Global Fund and the World Bank.

* * * * *

9. IntraHealth carries out a number of programs funded by Defendants USAID and CDC that are encumbered by restrictions contained in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("Global AIDS Act").

* * * * *

19. Solely in order to remain eligible to receive U.S. government funding to provide desperately needed HIV/AIDS prevention and care work around the world, IntraHealth in July 2005 adopted a policy opposing prostitution and sex trafficking.

20. DHHS and CDC have required all recipients of Global AIDS Act funding to "agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance [with the policy requirement]." *See, e.g.*, "Expansion and Support of HIV/AIDS/STI/TB Information, Education, Communication and Behavioral Change Communication Activities in Ethiopia—Amendment," 70 Fed. Reg. 29759, 29759-29760 (May 24, 2005), annexed to the Declaration of Daniel E. Pellegrom dated December 7, 2005 as Exhibit A.

21. IntraHealth must comply with the policy requirement as a condition of continuing its CDC-funded programs that include funding made available under the Global AIDS Act. These projects include grants by CDC to strengthen HIV/AIDS services in Southern Sudan, Tanzania, and Zambia.

22. IntraHealth must also comply with the policy requirement as a condition of continuing its USAID-funded programs that include funding made available under the Global AIDS Act. These projects include The Capacity Project, a five-year global initiative to improve health care systems in developing countries, primarily in sub-Saharan Africa. IntraHealth leads The Capacity Project, which develops health care workforce policies and planning, implements education and training programs for health care workforces, and strengthens systems to support workforce performance. The project is currently active in more than 15 countries.

23. IntraHealth leads four other USAID-funded projects that are encumbered by the policy requirement, each one a mission-based cooperative agreement. Two were awarded by the USAID mission in Rwanda and focus on (1) expanding access to health care and decentralization of health care and (2) increasing access to comprehensive HIV/AIDS services; another is a maternal and child health project awarded by the USAID mission in Senegal; and IntraHealth is funded by the USAID mission in India to identify and implement best practices in maternal, child, and newborn health and nutrition.

* * * * *

How the Policy Requirement Harms IntraHealth

26. The policy requirement detrimentally affects IntraHealth in several ways.

27. First, IntraHealth does not normally adopt policies on political or social positions. Rather, it seeks to find solutions to public health challenges based on its experience implementing public health programs and on its organizational purpose, "to create sustainable and accessible health care." IntraHealth has now been forced to espouse a policy position that does not arise from its own purpose, programs and research. It is bound to uphold that policy even though IntraHealth has no knowledge or data to demonstrate whether a policy "explicitly opposing prostitution" does or does not promote the health and well-being of women and vulnerable populations.

28. The second way in which the policy requirement harms IntraHealth is that it makes IntraHealth adopt a judgmental position against a highly marginalized and stigmatized population who is at the epicenter of the HIV/AIDS epidemic and has the least access to health services. IntraHealth trains health workers who must be able to establish trust and rapport with the populations they serve. The policy creates a barrier to establishing this trust and perpetuates the stigmatization and marginalization of an extremely vulnerable population, thereby decreasing access to care and impeding public health efforts to stem the epidemic.

29. The third way in which the policy requirement harms IntraHealth is that it is vague and confusing. IntraHealth believes it is in compliance with the policy requirement; however, the lack of guidance from

USAID, HHS and CDC as to the requirement's meaning leaves the organization unable to discern exactly what the policy requirement demands of us. This lack of clarity engenders an overall atmosphere of caution which effectively restrains our speech and our choice in program direction.

30. Fourth, the policy requirement harms IntraHealth by constricting the privately funded work that it can consider doing. Because of the policy requirement's vast reach in regulating privately funded speech and because of the uncertainty regarding its meaning, IntraHealth will not consider developing any privately funded work that removes barriers to health care for sex workers or vulnerable populations that engage in transactional sex for survival. If the policy requirement were lifted, IntraHealth could act with greater freedom to pursue new projects with non-government funding that are aimed at reducing barriers to health care for sex workers.

31. The fifth way in which the policy requirement harms IntraHealth is that it affects IntraHealth's ability to engage in dialogue about public health and sex work. I and other IntraHealth representatives frequently speak at public health conferences in the U.S. and around the world. Yet, if invited to participate in a public panel discussion about whether decriminalization and de-stigmatization of prostitution could benefit public health interventions to stem the spread of HIV/AIDS, we would not participate in that discussion in order to remain in compliance with the required policy.

32. The sixth way that the policy harms IntraHealth is that the setting up of affiliate organizations is not in line

with IntraHealth's mission to create sustainable and accessible health care. While some US NGOs may use the model of setting up affiliate organizations, IntraHealth works with existing local, indigenous organizations in the countries where we work and builds their capacity in order to create long-term sustainability of public health programs. Moreover, US NGOs who do set up affiliates to support HIV/AIDS work with those engaged in sex work likely receive Global AIDS Act funding and are thus encumbered by the policy.

33. The seventh way that the policy harms IntraHealth is that it is impractical to set up an affiliate organization to use private funds that could support projects that increase access to health services for persons engaged in sex work. The expense and burden of setting up affiliate organizations is prohibitive to IntraHealth as it would be for most similarly situated US NGOs. For example, the process for registering an organization in a foreign country to implement programs is extremely cumbersome and expensive. IntraHealth itself must register in many countries where it has programs in order to open a bank account and implement projects. Registration entails hiring local attorneys, paying registration fees, filling out forms, hiring consultants, traveling to the country, and waiting for months before starting programs. To have to register twice in a country where IntraHealth would need to set up an affiliate to participate in programs that may involve sex workers is too burdensome to be a viable option for the organization. Moreover, it is unlikely that other funders such as the European Union, UK Department for International Development, the Canadian International Development Agency, or private foundations would cover Intra-

Health's costs of for setting up an affiliate just to remain in compliance with a US policy.

34. Finally, the policy harms IntraHealth because an affiliate with completely separate personnel, management, and governance structures will not be able to capitalize on IntraHealth's experience, reputation, and current and prior presence in more than 50 countries across the globe, which is how and why IntraHealth receives its funding. For example, as part of the application process to receive both private and government funding, IntraHealth has to complete corporate capability statements and provide past performance references about our projects that delineate why we are the appropriate organization to implement a particular program. To set up an affiliate organization is to diminish the very strength and position that brings IntraHealth its current work and funding. In other words, a new affiliate organization with separate personnel, management, and governance would be limited in citing IntraHealth's corporate capabilities or past performance references to secure funding for new programs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan. 25, 2008
Chapel Hill, North Carolina

/s/ PAPE GAYE
PAPE GAYE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 05-CV-8209 (VM) (DF)

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., OPEN SOCIETY INSTITUTE, AND PATHFINDER INTERNATIONAL, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL., DEFENDANTS

[Feb. 6, 2008]

DECLARATION OF NILS DAULAIRE

I, NILS DAULAIRE, hereby declare as follows:

1. I am the President and Chief Executive Officer of the Global Health Council ("GHC"). I have held that position since 1998.

* * * * *

7. GHC's mission is to ensure that all who strive for improvement and equity in global health have the information and resources they need to succeed. Essential to fulfilling the GHC's mission as a professional association is our ability to create a safe and inviting space in which GHC members can opine on and debate im-

portant issues of public health, especially issues that are controversial. To that end, the GHC holds, on an almost weekly basis, conferences, forums, briefings, dinners and other events at which GHC members and guests share information, experiences and opinions. As a science-based professional association, GHC's most basic responsibility is to protect the ability of its members to carry out robust debate in the forums provided by GHC. Laws and policies that chill the ability of GHC members to bring evidence and opinion to bear on public health issues therefore inherently vitiate the fundamental rationale for GHC's existence.

8. GHC further realizes its mission by serving as a convener and host for member coalitions focused on specific issues. These coalitions include the Global AIDS Roundtable, the HIV/AIDS Implementers Work Group, the Neglected Tropical Diseases Coalition, the Malaria Roundtable and the Tuberculosis Working Group. GHC also plays an important role in other coalitions, such as the International Family Planning Coalition, the U.S. Child Survival Coalition and the Stop TB Coalition. HIV/AIDS is a prominent topic in most of these coalitions, since its impact is felt in many domains, including opportunistic infections, pediatric AIDS and reproductive health. These forums provide a vehicle for sharing information and coordinating evidence-based advocacy in favor of health policies that will most advance desired health outcomes. The free flow of information within the coalitions is essential to evolving policy recommendations that reflect the field experience and research of the members. GHC and its members engage in dialogue and advocacy with Congress and government agencies, such as Defendant United States Agency for Interna-

tional Development ("USAID"), to inform the government about pressing international health problems and to share evidence as to what policies help or hinder improved health. As the world's largest membership alliance dedicated to improving health throughout the world, GHC has over 30 years of experience informing the public and the government about critical health issues in the developing world and advocating for effective U.S. foreign assistance for health.

* * * * *

11. Many of GHC's U.S.-based members administer programs or provide health care services to people with HIV/AIDS or at high risk of contracting the virus, and more intend to administer such programs in the future. Some of these programs expressly target sex workers or include sex workers within their general scope. Many of the members' programs targeting sex workers have a proven track record in reducing HIV infection and providing treatment to those with the virus and have led to significant advances in understanding the physical, cultural, and socioeconomic underpinnings of the AIDS epidemic. Many of the members administering these programs receive funding to carry out HIV/AIDS work both from defendants and from other, private sources. Some examples of U.S.-based member organizations that receive both government and private funds are: EngenderHealth, *see* Declaration of Maurice Middleberg dated August 12, 2005, ¶ 4; plaintiff Pathfinder International, *see* Declaration of Daniel E. Pellegrom dated February 7, 2008, ¶ 7; CARE, *see* Declaration of Helene Gayle dated February 6, 2008, ¶¶ 3, 8; and IntraHealth, *see* Declaration of Pape Gaye dated January 25, 2008, ¶ 7.

* * * * *

23. GHC and its members are harmed by the policy requirement in several ways, each of which is discussed in greater detail in the following paragraphs: 1) The policy requirement chills debate in GHC-sponsored meetings and publications and therefore fundamentally undermines GHC's role as a professional association; 2) the policy requirement restricts the use of private funds by GHC's members; 3) the policy requirement compels members to adopt a policy and forces them to speak; and 4) the policy requirement is vague, and as such does not provide sufficient guidance for members to comply.

1. Chilling Debate in GHC-Sponsored Forums

24. GHC does not receive funds from the United States government, including the Global AIDS Act. Yet GHC is grievously harmed by the Act. The Act's deliberate chilling of free speech by our member organizations vitiates our core mission as a scientific and professional organization that promotes the free exchange of evidence, experience, analysis and opinion among our members. The harm to GHC exemplifies the wide-reaching, pernicious consequences of restricting the marketplace of ideas. The government has a hypothesis that criminalization of sex work assists in HIV prevention. The government then adopts the position that contrary evidence or experience gained by organizations actually implementing the Leadership Act may not be communicated in scientific forums organized by their professional association—GHC—or in any other forum even using non-federal funds. Though the GHC is not party to any agreement with the US government, GHC

members receiving Global AIDS Act funds cannot freely communicate their experience, evidence or views to GHC staff. Nor, using non-federal funds, can they communicate freely with fellow GHC members at forums organized by the GHC. Restrictions on speech are dangerous because they deprive the listener as the well as the speaker of the benefit of diverse views. In this instance, GHC is precluded from receiving the honest expression of the field experience of our members, though the GHC receives no funds from the US government.

25. The policy requirement chills and precludes the scientific and policy debate essential to the functioning of the GHC as a professional association. The position of the U.S. government that sex work should be criminalized is hotly contested in the global health profession. There is substantial contrary evidence in the professional literature (*see*, for example, M. L. Reckart, "Sex-Work Harm Reduction," *The Lancet* Vol. 366 (December 17/24/31, 2005): pp. 2123-2134.). The policy requirement also stands in opposition to the views expressed by multilateral organizations, including UNAIDS. Many of our members disagree, as a public health matter, with the view that sex work should be criminalized. Other members do not wish to take a public position on the legal status of sex work. However, the policy requirement bars from federal funding any member organization that fails to support the U.S. government position or presents evidence or experience at a GHC forum that contradicts the U.S. government position. GHC members who, on the basis of evidence and experience, do not agree with the U.S. government position but wish to access U.S. government funds are not permitted to express that view or share relevant evidence at GHC sci-

entific meetings or with GHC staff. This is a fundamental harm to the GHC, which depends on the free flow of evidence and opinion among its members to carry out its mission. This harm can only be redressed by protecting all our members from fear of retaliation for expressing their views at GHC scientific meetings and other forums.

26. The GHC manages multiple electronic and print publications, including a weekly newsletter, monthly newsletter, a magazine (Global HealthLink) and a newspaper (AIDSLink, which is devoted exclusively to HIV/AIDS). These publications are principally intended as an outlet for expression of member news, experience and opinion. The policy requirement precludes members from expressing a point of view contradicting that of the U.S. government in GHC publications for fear of being barred from federal HIV/AIDS funds. The chilling effect of the policy requirement on the expression of member viewpoints on AIDS policy in GHC publications is a direct harm to GHC. Redress of this harm requires that all our members be granted immunity against being disbarred from U.S. government funds as a result of expressing opinion in GHC publications.

2. **Restricting the Use of Members' Private Funds**

27. The policy requirement vitiates members' freedom to utilize private funds in the way they believe best advances public health. The Defendants' ban on the use of the non-U.S. government funds possessed by GHC members to do work that Defendants construe as being insufficiently opposed to prostitution restricts members from engaging in speech and HIV-prevention activities with their private funds. The vagueness of the policy

requirement, and Defendants' refusal to clarify what private activities grantees must abstain from, forces GHC's members to refrain from engaging in any activities that could possibly be construed as insufficiently opposed to prostitution. For this reason, U.S.-based GHC members have reported to GHC a pattern of self-censorship and reluctance to discuss programs for sex workers in public or for attribution.

* * * * *

3. Compelling Speech

31. The third way in which GHC and its members are harmed by the policy requirement is that it forces the members to espouse the U.S. government's policy position on a sensitive political issue. While the U.S. government clearly believes that criminalizing prostitution is the best and only way to protect women and sexual health, as a public health matter that point of view is disputed by many in the global health profession.

32. Many of GHC's U.S.-based members believe that prostitution causes serious health, psychological and physical risks for women, and they work to address those risks and assist women in finding alternatives. However, they also believe that by forcing the members to explicitly oppose prostitution, the policy requirement stigmatizes one of the very groups whose trust they must earn to conduct effective HIV/AIDS prevention and forces them to approach those engaged in prostitution in a judgmental manner. As a public health matter, they believe that this interferes with their HIV/AIDS prevention work.

33. Moreover, many U.S.-based members are aware that Defendants have construed the policy requirement

as prohibiting advocacy for the elimination of criminal penalties against women engaged in prostitution. Because GHC members operate under a variety of legal regimes around the world, many members are loathe to adopt a policy that directly contradicts the policy of some of the countries in which they work.

34. Were it not for the policy requirement, many of GHC's U.S.-based member organizations would not have adopted policies explicitly opposing prostitution. These include the organizations that stated in response to our member survey that they oppose the policy requirement. It is common practice in the field of international development to refrain from taking policy positions unless those positions flow naturally from the experience of providing services. For GHC's members, the adoption of a government-mandated, organization-wide policy infringes on the independence that is fundamental to their operation as non-governmental organizations.

35. For example, U.S.-based GHC member EngenderHealth has articulated a concern that being forced to adopt the government's policy may jeopardize its work in Brazil. *See* Declaration of Maurice Middleberg dated August 12, 2005, ¶ 15. Because the area of reproductive health is so sensitive, EngenderHealth risks alienating some funders or partners in its work by taking any policy position on the issue of prostitution, which in turn risks threatening the effectiveness of their HIV/AIDS prevention work.

4. Vagueness

36. The final way in which GHC and its members are harmed is that the policy requirement is confusing and vague and therefore imposes extra administrative costs.

Many U.S.-based members are unsure of what activities and speech they may and may not engage in with private funds. Members have reported that USAID missions have been inconsistent in applying the language of the policy requirement. Some members have reported that local USAID missions in countries in which they operate have demanded to see an organization's policy opposing prostitution while others have reported that missions did not demand to see the policy. Some members have reported that, in the absence of guidance from the Defendants, primary recipients of U.S. government funds have inserted their own language in subcontracts about what constitutes compliance with the policy requirement.

37. One U.S.-based GHC member had to spend months of scarce staff time and resources in discussion with USAID to reinstate a grant after it had been withdrawn under pressure from U.S. legislators. Because the requirements of the policy are vague, USAID was able to withdraw and reinstate the grant according to political pressure, forcing our members to commit scarce resources to allay the political fears of USAID.

38. Another U.S.-based GHC member was forced by the local USAID mission to commit scarce resources to training local service providers to comply with the policy requirement.

The Affiliate Guidelines Do Not Remedy the Harm to GHC And Its Members

39. USAID and HHS have issued guidelines with regard to the establishment of "affiliated" organizations that could express an opinion on sex work different from the U.S. government-mandated opinion. Such affiliated

organizations must be legally, physically, and financially separate. Factors used in determining whether the affiliate is separate from the entity receiving Leadership Act funds include the existence of separate personnel, management, and governance; separate accounts, accounting records, and timekeeping records; separate facilities, equipment and supplies; distinct signs and other forms of identification which distinguish the Recipient from the affiliated organization; and "protecting" the U.S. Government and the project name from public association with the affiliated organization. The guidelines caution that meeting these conditions would not necessarily constitute compliance with the Leadership Act, but that each instance would be considered on case by case basis.

* * * * *

43. The guidelines do not provide clear criteria for the creation of an affiliated organization. They quite clearly caution that an organization meeting all the criteria and factors could still be considered out of compliance and fail to meet some unstated "case by case" test. The guidelines also fail to explain how much weight will be given to each factor in the analysis of whether an affiliate is in compliance. Most importantly, the guidelines fail to achieve their essential purpose; they make no effort to clarify the vague prohibition from the original law and, in fact, only make the contours of that prohibition more unclear.

44. Significantly, the guidelines appear to bar GHC's members from controlling any organization that uses private funds to engage in speech barred by the policy requirement. One of the five criteria to be taken into account in determining whether enough separation ex-

ists is "[t]he existence of separate personnel, management, and governance." This criterion appears to bar our members from using their private money to engage in the forbidden speech through another organization. In this way, the guidelines fail to provide our members with an avenue for constitutionally protected speech.

45. Even if a GHC member were able to transfer its private funds to an affiliate, and to use those funds to speak through that affiliate, doing so would be logistically and financially difficult, and perhaps impossible. In order for a GHC member to speak freely with its private funds, it would have to create an affiliate organization in every country in which it operates. Creating affiliates that will maintain the legal, financial, and physical separation from the parent organizations that the guidelines require will present very heavy burdens on GHC's member organizations. Even if GHC members were to limit their creation of affiliates just to those countries in which they might express an opinion differing from the U.S. government view on sex work, the requirements would still be heavily burdensome. These burdens virtually preclude any member from actually developing an affiliate as demanded by the government.

46. The legal separation mandated by the guidelines imposes heavy costs on GHC' s member organizations in terms of time, effort, and money. In many of the developing countries where GHC's member organizations operate, starting a new NGO is a complex and arduous process. The NGO must secure the approval of the local government to register, which typically involves complex negotiations with multiple ministries. That process takes a great deal of time by the NGO's employees and requires the help of attorneys, whose fees the NGO

must pay. Moreover, it is far from a foregone conclusion that the governments of developing countries will approve the registration of affiliates whose only purpose is to satisfy a US government requirement for expressing a point of view.

47. Even if the registration of the affiliate is approved, it is likely to be very difficult to staff the new entity with the separate personnel required by the guidelines. If the new affiliate tries to hire citizens of the United States or of a third country, it will have difficulty securing visas and work permits. The governments of developing countries grant such authorization to secure essential expertise, not to import persons whose job is necessitated by restrictions on the advocacy functions of existing organizations. Local employees are hard to find in many countries either because the requisite skills will not be available or because national staff feel vulnerable to political and other pressures if they espouse unpopular points of view.

48. Our members will also incur enormous costs recruiting and employing a second, redundant set of employees. It is extremely expensive for our members to hire expatriates or third country nationals to staff their offices. In the case of expatriate employees, members generally pay for such expenses as each employee's moving and housing costs, their children's education, and bringing the family home for visits.

49. Establishing and operating a physically separate office will also be extremely expensive for our members, who must pay for security, office equipment, furnishings and other items for each office. Additionally, in some developing countries where GHC members operate,

technological equipment such as computers, printers, satellites, and networking supplies must be imported. This is not only expensive, but requires the members to work through detailed local customs laws for a second time. It also requires paying for computer set-up and operation (often including installing the necessary wiring and satellite dishes) in a second office.

50. Another difficulty created by the guidelines is the requirement that the board of directors of the parent NGO be entirely separate from the board of the affiliate. Boards of Directors are the final authority over and control GHC member organizations. The affiliates, then, would also be controlled by their separate and independent boards. If the premise behind the creation of the affiliate is to create a way for the parent to speak its intended message through another source, this requirement runs counter to the achievement of that ostensible goal. The affiliate having a separate board will make it impossible for the parent NGO to have control over the affiliate and thus control over the message coming from that affiliate. This requirement, then, could again leave the parent NGO with no outlet for its intended message.

51. The financial separation mandated by the guidelines is equally onerous for members. Since no commingling of funds is allowed between the parent organization and the affiliate, the affiliate would be required to raise all its own funds, starting from nothing. This is a difficult and time consuming process. Fund raising is already extremely challenging for GHC members. The new affiliates would have to allocate valuable man-power and resources towards fund raising and away from achieving the organizations' objectives. The affiliates would have to convince potential donors to give money

before the organization has a track record of work to showcase to potential donors. To raise requisite funds, it is very likely that the affiliate will need to draw on the pre-existing donor pool of the parent NGO. Since there is only a finite amount of money donors are willing to give to NGOs, this will deprive the parent organization of much needed funds.

52. The legal, governance, and financial challenges pose an insuperable burden for our members. The practical consequence will be to bar GHC members from expressing a point of view through any organizational vehicle. The Government proposes that a non-profit organization divert scarce resources from their primary mission of addressing the HIV/AIDS pandemic and other critical health and poverty alleviation programs to rent or buy facilities, hire a separate staff, create an independent Board, develop separate accounting systems, and create a new, distinct identity so that it may express an opinion on an issue of public policy. Even undertaking all these actions may not suffice given the ambiguity of the case-by-case test in the guidelines. The government has created an extremely high and unreasonable hurdle for organizations to surmount.

53. Even if the legal, governance and financial hurdles could be surmounted, the creation of an affiliate divorced from the rest of the existing organization's program implementation undercuts its utility as an advocate of a point of view. To the extent that groups would have to cordon off sex work advocacy from other programs it would force NGOs to have an artificial separation between advocating policy positions and the practical experience of implementing programs from which their policy positions derive. The utility of NGOs in the

policy arena stems largely from their unique vantage point. The positions they advocate come from experience gained on the ground and from their understanding of the true consequences of policies formulated in far away capitals. A forced dichotomy between the NGOs that implement and those that advocate undermines the utility of our members as bridges between policy makers and the complex realities encountered while implementing programs.

54. More fundamentally, the affiliate guidelines in no way alleviate the central harm to the Global Health Council. As stated above, the very rationale for the existence of the GHC as a professional organization is to create forums at which our members may come and freely share opinions based on the evidence and experience derived from their work. We emphasize that this means the work of the organizations actually implementing the HIV/AIDS programs, not some arms-length affiliate that does not have the same governance, management, staff, expertise or evidence as those actually implementing programs. GHC is, above all, a place at which organizations that implement programs share the reality that they encounter in the field, including how public policy affects program implementation. The anti-prostitution policy requirement prevents those implementing the HIV/AIDS Leadership Act from providing informed comment to each other and to the GHC as to the assumptions and impacts of the Act. For example, GHC is soon hosting its annual conference. There, Pathfinder will have a poster session—a booth with information and a staffer to speak with—called "Condoms and Health Care: Sex Workers Need More." Pathfinder can speak freely at the event because they have the pro-

tection of the injunction, but other conference attendees would not be able to have poster sessions that engage interested parties in a free and open exchange of ideas on sex work for fear of violating the policy requirement. The GHC is therefore robbed of its ability to encourage informed dialogue among its members. The GHC is prohibited from hearing the views of the members implementing the Global AIDS Act if those views differ from the government-approved opinion. Any member receiving Global AIDS Act funds risks losing those funds by communicating a dissenting opinion to the GHC or at a GHC-sponsored forum. This means that the GHC cannot offer Congress or the executive branch an accurate rendering of the experience and evidence derived from its members if they differ from government-sanctioned opinion. The creation of "affiliates" does not address these fundamental damages to the GHC since we are still barred from hearing the untrammeled views of our members.

* * * * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb. 6, 2008
Washington, District of Columbia

/s/ NILS DAULAIRE
NILS DAULAIRE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 05-CV-8209 (VM)(DF)

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., OPEN SOCIETY INSTITUTE, AND PATHFINDER INTERNATIONAL, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ET AL., DEFENDANTS

[Feb. 6, 2008]

DECLARATION OF HELENE GAYLE

I, Helene Gayle, hereby declare as follows:

1) I am President and Chief Executive Officer of Cooperative for Assistance and Relief Everywhere, Inc. ("CARE").

* * * * *

3) CARE is a non-profit cooperative association incorporated as the Cooperative for Assistance and Relief Everywhere, Inc. under the laws of the District of Columbia. It enjoys tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 151 Ellis Street, NE, Atlanta, Georgia 30303. CARE also has an office at 32 West 39th Street,

3rd Floor, New York, New York 10018 where it raised over five million dollars in private funding last year. CARE is a member of CARE International ("CI"), a federation of 12 other CARE nonprofit members incorporated separately in Australia, Austria, Belgium, Canada, Denmark, France, Germany, Japan, the Netherlands, Norway, Thailand and the United Kingdom.

4) CARE is a member of InterAction, a network of U.S.-based humanitarian organizations. Membership in InterAction enables CARE to advance its mission and goals through collaboration and advocacy with other organizations that also seek to eliminate poverty and improve the quality of life for people in developing countries. CARE is also a member of the Global Health Council, through which it advances its interest in the promotion of sound international public health policy and practice.

* * * * *

6) In its last fiscal year (FY 06), CARE projects reached 55 million people in 66 countries throughout Africa, Latin America, Asia, Europe and the Near East. CARE accomplishes its mission by working closely with local nongovernmental organizations, host country governments, governmental and private donors, other CI members, health care providers and individuals in the communities it serves. Among its programs, CARE provides quality family planning and reproductive health services, and works to halt the spread of HIV and improve maternal and child health.

7) Last year, CARE expended $590 million toward its work overseas, funded by grants and donations from sources including Defendants United States Agency for

International Development ("USAID") and the United States Centers for Disease Control and Prevention ("CDC"), an operating agency of Defendant Department of Health and Human Services ("HHS"). CARE also receives funds from agencies of the United Nations, European Union, foreign governments, and the World Bank, and numerous foundations, corporations and individual donors.

The Global AIDS Act Restrictions

8) CARE carries out a number of programs funded by Defendants USAID and CDC that are encumbered by restrictions contained in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("Global AIDS Act").

* * * * *

15) CARE must comply with the policy requirement as a condition of engaging in programs overseen by USAID and the CDC that draw HIV funding authorized by the Global AIDS Act. These programs include assistance to orphans and vulnerable children, prevention of mother-to-child transmission of HIV, and capacity building to train indigenous nonprofits to implement HIV and AIDS programs. CARE receives Global AIDS Act funding for numerous projects including Strengthening and scaling up of the Hope for African Children Initiative in Africa ("SSUH"), a project to provide services to children affected by and/or infected with HIV in Ethiopia, Zambia, Senegal, Ghana, Cameroon, Kenya, Mozambique, Malawi and Uganda; Local Links, a project that assists orphans and vulnerable children in Kenya and South Africa; and two Associate Awards under the Communities Responding to the HIV/AIDS Epidemic

("CORE") Initiative. CARE also conducts privately funded HIV and AIDS initiatives several countries including India, Rwanda, Burundi, Lesotho, Mozambique, Bangladesh, and Mali.

16) Solely in order to comply with the policy requirement and to remain eligible to receive U.S. government HIV funding to provide desperately needed HIV prevention, care and treatment work around the world, CARE adopted a Policy on Working with Vulnerable People Involved in Prostitution and Sex Trafficking. Were it not for the requirement in the Global AIDS Act, CARE would not have adopted a policy addressing prostitution.

How the Policy Requirement Harms CARE

17) The policy requirement harms CARE by covering activity not funded by the U.S. government. Although CARE's USAID and CDC funding is limited, CARE's HIV and AIDS work with private, non-US government, funding is also affected by the policy requirement. If an overly broad construction of the policy requirement were adopted, Defendants may construe CARE's non-U.S. Government funded activities as being insufficiently opposed to sex work. CARE believes that it is complying with the policy requirement, but it does not know whether Defendants USAID, HHS and CDC agree.

18) For example, the policy requirement threatens CARE's privately funded HIV prevention work with sex worker organizations and networks. Based on years of responding to the onslaught of HIV and AIDS on the most vulnerable groups, including sex workers, CARE has learned that mobilizing community groups and building collective strength is often the most effective

and sustainable way to fight HIV over the long-term in high-risk communities. Individually, sex workers have little leverage to turn society's riskiest practices toward safer sex. Collectively, networks of sex workers can be empowered to influence those most at risk toward preventive behaviors.

19) With private funding, CARE helps develop these sex worker organizations, in Bangladesh and India, for example, with the purpose of achieving more effective HIV prevention outcomes. While CARE believes that this approach complies with the policy requirement, it fears that defendants USAID, HHS and CDC may construe the policy requirement overly broadly and penalize CARE for the independent views of sex worker organizations with which it works.

20) CARE's privately funded work with sex worker organizations was questioned by former Rep. Mark Souder in a letter dated December 7, 2005 to the Hon. Andrew Natsios, then-Administrator of USAID. In the letter, Rep. Souder used CARE's privately funded tuberculosis prevention work with the Durbar Mahila Samanwaya Committee ("DMSC") to impute the views of DMSC to CARE. He then asserted that CARE's association with DMSC constitutes a violation of the policy requirement. The vagueness of the policy requirement harms CARE because it makes possible such false allegations that can do considerable harm to CARE's reputation.

21) On or about June 23, 2006, USAID officers contacted CARE's senior managers in India and Bangladesh to inquire about CARE's relationship with DMSC which received only private funding from CARE and

was not connected with CARE's USAID- or CDC-funded HIV and AIDS work.

22) In August 2006, USAID's Acting General Counsel sent CARE a letter asking it to respond to allegations regarding CARE's privately funded work with sex worker groups in India and Bangladesh. CARE responded to the request but remains concerned that it is at risk of continued intrusive and unwarranted governmental investigations regarding whether CARE is engaged in activities that government investigators may construe as insufficiently opposed to prostitution.

23) CARE considers it essential to work with vulnerable populations, including sex workers, to combat the spread of HIV. CARE expends great effort to gain the trust of these individuals in order to educate individuals at high risk of contracting HIV about the prevention and treatment of HIV. In Bangladesh, for example, CARE has been recognized by UNAIDS and the World Health Organization as a best practices leader for its work in identifying effective prevention strategies that involve sex workers as peer educators. In CARE's experience, explicitly adopting a written policy that opposes prostitution may be viewed by this vulnerable group, sex workers, as contrary to their interests and could undermine their trust in CARE and hamper CARE's efforts to educate this vulnerable population about HIV and AIDS. The policy requirement harms CARE because it compels CARE to speak where CARE would otherwise have remained silent.

24) CARE is a prominent advocate of humanitarian best practices that regularly hosts and engages in vibrant discussion and debate on topics integral to HIV

and AIDS ranging from best practices aimed prevent HIV transmission within high-risk groups, to reducing stigma, and empowering women and girls. These strategies have been shown to be effective in reducing HIV transmission in targeted communities. However, out of caution and uncertainty, CARE has restricted its media and public communication to raise awareness of its work in India and Bangladesh, and has often declined to share what it has learned regarding HIV prevention strategies at conferences both in the United States, including New York, and abroad.

25) The policy requirement also harms CARE in that it affects CARE's active, privately funded advocacy programs, both within the United States and within the countries and communities where CARE works overseas. CARE actively seeks to improve the U.S. and global policy environments to support effective international family planning, reproductive health and HIV programs. CARE accomplishes this by educating policy-makers and the general public about conditions facing women and their families in developing countries and the impact of laws and policies on the delivery of services related to family planning and HIV prevention, care and treatment. CARE must ensure that any advocacy it undertakes conforms to the policy requirement. CARE fears that it may seem to violate the policy requirement if it broadly discusses alternative approaches to HIV prevention among high-risk groups, either in the United States or abroad, because it is not clear which advocacy approaches are perceived by the Defendants as compliant. The concern is that the advocacy itself may be seen to violate the policy, even if CARE's overseas program activities do not. Thus, although CARE

believes itself to be in compliance with the U.S. government policy, the effect of the policy requirement is to inhibit substantially open discourse regarding innovative and effective approaches to reduce the spread of HIV infection among high-risk groups.

26) Finally, a basic and explicit tenet of CARE's work in humanitarian assistance and disaster relief is grounded in its efforts to aid exploited, disenfranchised, or marginalized people without conveying a message of condemnation or disrespect. CARE's core values are strongly grounded in an ethical commitment to ensure that it stands with, and not above, the individuals it serves. The policy requirement harms CARE by compelling it to speak in a manner that is inconsistent with its mission and its core values. In exercising its right to use its private funds to speak and advocate on behalf of the world's poorest people, CARE should not be constrained the judgmental approach adopted by the U.S. government.

Why the new guidelines are burdensome to CARE

* * * * *

29) The guidelines are burdensome because (1) the guidelines are vague; (2) their vagueness makes implementation impractical for a non-profit organization like CARE; and (3) even if CARE could abide by the guidelines, this would do not resolve CARE's concern about the harms generated by the policy requirement .

30) The guidelines are vague because they offer no guidance as to what activities would be considered inconsistent with a policy opposing prostitution and sex trafficking or "restricted activities". Based on its years of field experience responding to the onslaught of HIV

and AIDS on the most vulnerable groups, including sex workers, CARE seeks to implement an integrated and holistic set of interventions designed to be most effective and sustainable to fight HIV and AIDS over the long-term in high-risk groups. Under these guidelines, CARE is unable to determine which interventions might be considered "restricted activities" required to be conducted by an affiliate. CARE is concerned that arbitrary parsing of activities and bifurcation of interventions designed to work as an integrated whole would reduce CARE's ability to implement effective HIV programs among the most vulnerable groups.

31) The vagueness of the five factor physical and financial separation test in the third requirement of the guidelines make creation of an affiliate financially impracticable for a non-profit organization like CARE. The guidelines provide that the agencies will determine sufficient physical and financial separation "on a case-by-case basis...based on the totality of the facts"; that "presence or absence of any one or more factors will not be determinative"; and that factors relevant to the determination "shall include but will not be limited to" the five factors. In addition, three of the five factors are qualified by the phrases "degree of separation" and "the extent to which". Given this, if CARE were to create an affiliate, it would be impossible for CARE to accurately predict how the agencies would evaluate physical and financial separation of the entity. Prudence would require that such an affiliate meet all elements of each factor in the guidelines. However, expending CARE's limited resources to create, fund, operate and maintain a separate legal entity with separate personnel, separate management, separate governance, separate accounts,

separate accounting records, separate time keeping records, separate facilities, separate equipment, separate supplies and separate signs and forms of identification solely in order to be able to carry out a likely narrow but undetermined list of activities would be impractical in light of CARE's obligation as a non-profit organization to carefully and responsibly steward financial resources entrusted to it by donors.

32) In addition, the guidelines are impractical in the context of CARE's international organizational structure. CARE coordinate operations on behalf of CI in the following countries: Burundi, Democratic Republic of Congo, Eritrea, Ethiopia, Rwanda, Somalia, Sudan, Tanzania, Uganda, Angola, Benin, Ghana, Ivory Coast, Lesotho, Madagascar, Malawi, Mali, Mozambique, Niger, Sierra Leone, South Africa, Togo, Afghanistan, Bangladesh, India, Nepal, Pakistan, Philippines, Sri Lanka, Tajikistan, Bolivia, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua and Peru. In many countries, CARE operates through registered branch offices and CARE conducts privately funded programs through all of its branch offices. In order to be able carry out activities overseas, a CARE affiliate may also be required to register branch offices. The process of obtaining host government approval and clearance to establish operations and carry out programming in a country can be lengthy, complicated and fraught with bureaucratic hurdles.

33) In one of the countries in which CARE operates, the law governing foreign NGOs has changed twice since 2005, requiring all foreign NGOs to re-register with relevant ministries. For CARE, the first re-registration

effort took about nine months to complete, while the second took about four months.

34) CARE's presence in many of the countries where it works is based on agreements with host governments negotiated decades ago. In some countries, host governments are actively seeking to nurture and promote the growth of indigenous NGOs, limiting the space in which foreign NGOs can operate. If it were required to obtain, from over 35 individual host governments, permission for a CARE affiliate to operate within their borders, the sheer volume of time and resources necessary to do this would likely make the proposition prohibitive for CARE.

35) Even if a CARE affiliate were able to obtain the necessary permissions, in order to maintain physical and financial separateness prescribed in the guidelines, country offices of the affiliate would likely have to maintain separate personnel, separate management, separate governance, separate accounts, separate accounting records, separate time keeping records, separate facilities, separate equipment, separate supplies and separate signs and forms of identification from the CARE offices already operating in those countries. The process of establishing country office operations is akin to opening a small business and includes, among other things, locating and leasing office space, recruiting and hiring local staff, obtaining work permits for international staff if necessary, obtaining bank accounts, obtaining import licenses for any number of items, ranging from computers to cars. The level of resources required to create, fund, operate and maintain a duplicate set of offices would likely make the affiliate option unviable for CARE.

36) The requirement to maintain separate signs and forms of identification suggests that an affiliate may not even be able to use the CARE name and brand. CARE's vast poverty fighting experience and reputation are inherent in its name and brand, and is a key to attracting donor funding for its work. If the affiliate is unable leverage CARE's goodwill and reputation, it is unclear how a new and unknown organization would be able to attract the type of donor funding necessary to develop effective and sustainable programs.

37) As a cooperative association organized under the laws of Washington D.C., CARE is governed by a Board of Overseers that also acts as its Board of Directors. Because the guidelines require an affiliate to have separate governance and separate management from CARE, it is unclear what type of control, if any, CARE would be able to assert over such an entity. If the objective of these guidelines is to un-encumber organizations like CARE from the burdens on speech imposed by the policy requirement by offering an alternative route through which they might speak, the degree of separation described in the guidelines do not appear to offer CARE a viable alternative route. It is unclear that members of the general public would even be able to discern a relationship between CARE and an affiliate created under these guidelines.

38) Finally, the guidance adopted by USAID and HHS in July 2007 does not absolve CARE of the requirement to adopt a policy explicitly opposing prostitution. CARE is still being compelled to speak where CARE would otherwise have remained silent.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb. 6, 2008
In Atlanta, Georgia

/s/ HELENE GAYLE
HELENE GAYLE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 05-CV-8209 (VM) (DF)

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., ET AL., PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ET AL., DEFENDANTS

[Feb. 7, 2008]

DECLARATION OF DANIEL E. PELLEGROM

I, DANIEL E. PELLEGROM, hereby declare as follows:

1. I am, and have been since 1984, the President of Pathfinder International ("Pathfinder").

* * * * *

3. Pathfinder is a non-profit corporation incorporated under District of Columbia law. It enjoys tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 9 Galen Street, Suite 217, Watertown, Massachusetts 02472-4501.

4. Pathfinder was founded in 1957 by Dr. Clarence J. Gamble, a private philanthropist, and it was one of the first U.S.-based organizations to address international population issues. Pathfinder's mission is to provide access to quality family planning and reproductive health services to women, men, and adolescents throughout the developing world. In addition to its family planning work, Pathfinder also works to halt the spread of HIV/AIDS, improve maternal and child health, and prevent unsafe abortions. It accomplishes these goals by developing partnerships with local non-governmental organizations, host country governments, the private sector, and health care providers. Pathfinder's governing philosophy is to provide this assistance with concern for human rights, for the status and role of women, and from the perspective of the clients it serves.

5. Pathfinder operates in the following 27 countries: Angola, Bangladesh, Bolivia, Botswana, Brazil, Burundi, Colombia, Ecuador, Egypt, Ethiopia, Ghana, Guatemala, Guinea, India, Kenya, Moldova, Mozambique, Nepal, Nigeria, Papua New Guinea, Peru, South Africa, Southern Sudan, Tanzania, Uganda, Vietnam, and Yemen.

* * * * *

7. Pathfinder's annual budget, which for fiscal year 2008 totals $89 million, is funded by grants and donations from multiple sources, including Defendants United States Agency for International Development ("USAID") and the United States Centers for Disease Control and Prevention ("CDC"), an operating agency of Defendant Department of Health and Human Services ("HHS"). Pathfinder also receives funds from several agencies of the United Nations, the Swedish, Canadian,

and Dutch governments, the World Bank, and numerous foundations, corporations and individual donors.

8. In the following 18 countries, Pathfinder receives funding from sources other than the US government to operate projects that do not receive any Global AIDS Act funding: Angola, Bangladesh, Bolivia, Brazil, Colombia, Ecuador, Ghana, India, Kenya, Mozambique, Nigeria, Papua New Guinea, Peru, South Africa, Southern Sudan, Tanzania, Uganda and Vietnam.

II. The Global AIDS Act Restrictions

9. Pathfinder carries out a number of programs funded by Defendants USAID and CDC that are encumbered by restrictions contained in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("Global AIDS Act").

* * * * *

19. Pathfinder must comply with the policy requirement, as modified by the guidelines, as a condition of continuing its USAID-funded programs that include HIV/AIDS components. Among these programs are one project to increase the use of child survival and reproductive health services in Mozambique and another to extend service delivery for reproductive health services globally.

20. Pathfinder must also comply with the policy requirement as a condition of subcontracts it holds with other development organizations to carry out USAID-funded work, for example a program to improve HIV-AIDS policies in Nigeria.

21. Pathfinder also must comply with the policy requirement as a condition of continuing its CDC-funded

work to implement a program to prevent mother-to-child HIV transmission in Kenya, to expand home-based care programs for HIV-positive persons in Tanzania, and to expand psychosocial and peer counseling services in Botswana.

III. Pathfinder's Policy

22. Solely in order to comply with the policy requirement, and to remain eligible to receive U.S. government funding to provide desperately needed HIV/AIDS prevention and care work around the world, in July 2005, Pathfinder adopted the following policy:

> In order to be eligible for federal funding for HIV/AIDS, Pathfinder opposes prostitution and sex trafficking because of the harm they cause primarily to women. Pathfinder's HIV/AIDS programs seek to promote effective ways to prevent the transmission of HIV/AIDS and to reduce the suffering caused by HIV/AIDS. In order to achieve these goals, Pathfinder works with, and provides assistance and support to and for, many vulnerable groups, including women who are commercial sex workers, who, if not effectively reached by HIV/AIDS programs, will suffer and can become drivers of the HIV/AIDS epidemic.

IV. How the Policy Requirement Harms Pathfinder

23. The pledge requirement hurts Pathfinder and the clients it serves, both by compelling Pathfinder to espouse the government's point of view and by limiting Pathfinder's speech and activities.

A. Compelling Speech and Mandating Viewpoint

24. Pathfinder has been forced to stake out a policy position on an issue on which it wished to remain neutral at this time. As an international development organization operating in multiple countries, each with its own set of laws and cultures, Pathfinder is mindful of the need to refrain from taking policy positions without careful study and deliberation. With the exception of the anti-prostitution policy it adopted to comply with the policy requirement, Pathfinder's policy positions have been formed only after deeply studying an issue, primarily by examining its own experience promoting access to health care in the developing world. Were it not for the mandate in the Global AIDS Act, Pathfinder would not have adopted its anti-prostitution policy.

25. Moreover, because the policy requirement is vague and confusing, Pathfinder has no way of knowing whether the policy it has adopted complies with the requirement. To my knowledge, neither the Global AIDS Act nor any of the Defendants has defined what it means to have a policy "explicitly opposing prostitution." I do not know what Defendants mean by this phrase.

26. Pathfinder believes its policy does comply with the policy requirement. However, given the lack of guidance from USAID, HHS, and CDC as to the requirement's meaning, Pathfinder fears that if the preliminary injunction is lifted Defendants USAID, HHS, and CDC will apply an overly broad interpretation of the policy requirement to Pathfinder's policy and find Pathfinder out of compliance with the policy requirement.

27. The guidance adopted by Defendants USAID and HHS in July 2007 does not absolve Pathfinder of the re-

quirement that it adopt a policy "explicitly opposing prostitution." Although it permits Pathfinder to transfer private funds to a legally, financially, and physically separate entity over which Pathfinder exercises no control, which can then engage in activities that would otherwise run afoul of the policy requirement, Pathfinder itself continues to remain obligated to maintain a policy "explicitly opposing prostitution" so long as it accepts any Global AIDS Act funds from Defendants.

28. That policy necessarily governs not only Pathfinder's use of federal funds, but also the entire Pathfinder entity. Pathfinder must get funds from sources other than Defendants, because Defendants require it to do so to be eligible even to apply for funding. For example, a USAID regulation requires U.S.-based NGOs such as Pathfinder to "solicit[ ] and receive[ ] cash contributions from the U.S. general public" in order to be eligible to receive certain USAID funding. *See.* 22 C.F.R. § 203.3(b) (organization may register as a U.S. private and voluntary organization, a requirement for many cooperative agreement grants, only if it raises funds from the U.S. public). USAID requires that fully 20 percent of the support for Pathfinder's international work come from non-US government sources. *See* USAID, Frequently Asked Questions, *available at* http://www.usaid.gov/pubs/sourcebook/usgov/faqs.html (accessed Jan. 4, 2008), attached hereto as Exhibit A. The policy requirement dictates how these private funds can and cannot be used.

B. Limiting Pathfinder's Speech and Activities

29. Pathfinder engages in a significant amount of activity not funded by the U.S. government that could be

affected by an overly broad construction of the policy requirement. Currently, this Court's preliminary injunction allows Pathfinder to conduct this work. Pathfinder believes that even if the preliminary injunction is lifted, a proper interpretation of the policy requirement would permit it to continue engaging in this work. However, because the policy requirement itself uses vague and confusing language, and because Defendants have refused to clarify what it means, Pathfinder does not know whether Defendants USAID, HHS, and CDC agree that all of Pathfinder's work is permissible under the policy requirement. Consequently, if the preliminary injunction is lifted, I will need to ensure that Pathfinder refrains from engaging in any activities that could possibly be construed as insufficiently opposed to prostitution, even if Pathfinder itself does not view the activities that way.

1) Work with vulnerable populations

30. One category of activities Pathfinder engages in that might be barred by an overly broad construction of the policy requirement concerns Pathfinder's HIV/AIDS prevention work aimed at vulnerable populations, including sex workers. In Brazil, India, and Mozambique, Pathfinder currently uses funding solely from sources other than the U.S. government to prevent the spread of HIV among vulnerable groups including sex workers. In the past, it has run similar programs in Nigeria. One strategy that Pathfinder has found to be highly effective is to organize sex workers and to work cooperatively with existing sex worker organizations to promote their health and human rights. Pathfinder engages in this work because, like most international development organizations, it works with local groups, including organi-

zations composed of sex workers, to identify their needs and priorities and then to achieve the goals they have identified within the international framework of their right to health.

a) India

31. For example, Pathfinder's privately funded Mukta program in India seeks to organize sex workers so that they will collectively agree to engage in HIV prevention methods, such as using condoms. While Pathfinder believes that its organizing of sex workers in India complies with the policy requirement, it fears that Defendants USAID, HHS, and CDC may construe the policy requirement in an overly broad manner and subject Pathfinder to penalties should sex worker organizations it has fostered or cooperated with then pursue goals that Defendants view as inconsistent with opposition to prostitution.

32. In March 2007, Mukta held a convening that brought together more than 1,800 sex workers from Maharashtra to discuss rights, empowerment, and HIV/AIDS prevention. Among the topics the attendees discussed were the human rights of sex workers and their interactions with the police and other government officials. If the preliminary injunction were not in place, Pathfinder could have faced possible charges that it was violating the policy requirement for hosting a convening at which the participants spoke so freely.

33. Pathfinder's Mukta program also conducts outreach to brothel owners and pimps in an attempt to foster safer sex practices. While Pathfinder conducts this work for the purpose of promoting HIV prevention and assisting the women in the brothels, it also must at times

gain the trust of brothel owners in order to gain access to the women it is trying to help. Although Pathfinder believes that this outreach does not violate the policy requirement as set forth in the Global AIDS Act, it fears that Defendants USAID, HHS and CDC might view this outreach as being insufficiently "opposed to prostitution."

b) Brazil

34. A second project affected by the policy requirement is work performed by Pathfinder employee Dr. Carlos Laudari in Brazil. In Brazil, Dr. Laudari provides technical assistance in capacity building. As part of this work, he serves as a facilitator in strategic planning to various associations including some sex worker associations. For example, in late February 2008, Dr. Laudari plans to serve as a facilitator at Brazil's National Consultation on Prostitution, HIV/AIDS and Human Rights. It is likely that participants in the meeting will discuss the vulnerability of prostitutes to rights violations by the police, pimps and others. Participants may well recommend that prostitution be de-penalized in order to decrease this vulnerability. Were Pathfinder not under the protection of the preliminary injunction, Dr. Laudari would need to censor his speech at the convening to ensure that his involvement did not bring Pathfinder into violation of the policy requirement.

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41. The policy requirement also affects Pathfinder's ability to publish in the U.S.—on its website and elsewhere—the results of the HIV/AIDS research it conducts and the HIV/AIDS training materials it creates. For example, in 2004 Pathfinder produced a handbook

funded by the Canadian International Development Agency, called "The Nigeria HIV/AIDS Responsive Fund (NARF) Handbook on Incorporating Gender and Human Rights in HIV/AIDS Training," the relevant pages of which are attached as Exhibit B. Pathfinder continues to make the handbook available to interested people in Nigeria, the U.S., and elsewhere through its website. Were the preliminary injunction lifted, it is possible that the Defendants would construe the policy requirement broadly to bar Pathfinder from distributing this handbook, because it discusses "laws proscribing sex work" as a human rights factor making women particularly vulnerable to HIV, and lists "legislation" and "government policies" as "possible contents of HIV/AIDS mitigation training." See Exhibit B, pp. 34, 39.

42. Likewise, Pathfinder staff regularly attend conferences in the U.S., sponsored by Global Health Council, the American Public Health Association ("APHA"), InterAction and other groups, at which they discuss their ongoing work, including their HIV/AIDS prevention work and research among sex workers and their clients. For example, Pathfinder plans to present 14 papers at the upcoming 35th Annual International Conference on Global Health, sponsored by the Global Health Council, which will be held in May, 2008. One of those papers, titled "Condoms and Health Care: Sex Workers Need More," will be based on the work of Pathfinder's Mukta project with sex workers in India. Pathfinder staff presented another paper based on the work of the Mukta project at the November 2007 meeting of the APHA. An abstract of that paper, entitled, "Men Behind the Menace: An Ethnographic Study of Male Clients of Female Sex Workers in the Wake of the HIV/AIDS Epidemic in

India," is attached as Exhibit C. Were the preliminary injunction lifted, Pathfinder would have to censor its speech at these conferences to ensure that none of its presentations could be construed, even inadvertently, as being insufficiently opposed to sex work.

* * * * *

V. The Burdens Imposed by the Guidelines

45. The guidelines issued by Defendants USAID and HHS in July 2007 only exacerbate the problems associated with the policy requirement. They do not answer any of the most basic questions about what Pathfinder can and cannot say with our private funds and they make the creation of an affiliate prohibitively burdensome.

A. Vagueness

46. The guidelines have only increased Pathfinder's uncertainty about the speech and activities in which it is permitted to engage under the policy requirement. Significantly, the guidelines offer no guidance about which activities Pathfinder must conduct through a separate entity.

47. Moreover, although the guidelines require that Pathfinder be "physically and financially separate from the affiliated organizations," they do not provide clear guidance regarding how Pathfinder can ensure that it is physically and financially separate enough. Rather, they list five factors, warning that the agencies "will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative." As President

of Pathfinder, I recognize that, given the enormous financial and even criminal penalties that may flow from a violation of the policy requirement and its guidelines, the only prudent course would be for Pathfinder to maintain very great separation between its activities and the activities of any affiliate that engages in activities barred by the policy requirement. Although Defendants might conceivably permit a lesser level of separation, I have no way of knowing that without risking grave consequences for the entire organization.

48. The guidelines' vagueness is exacerbated by the vagueness of the individual factors the Defendants will consider in deciding whether Pathfinder and any other entity are "physically and financially separate," many of which use terms such as "the extent to which" and "the degree of." For example, among the five factors are: a) "[t]he degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities," b) "the extent of such restricted activities by the affiliate," c) "[t]he extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization are absent," and d) "[t]he extent to which [Defendants], the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conferences and press or public statements." I do not know how much of any of these factors is too much. As a result, if the preliminary injunction is lifted I will need to ensure that Pathfinder complies with each factor to the maximum extent.

B. Legally separate entity

49. In addition to being vague, the guidelines place an extremely heavy burden on Pathfinder's ability to set up an affiliate to use private funds to engage in activities otherwise barred by the policy requirement.

50. For example, the guidelines require that the affiliate be "a legally separate entity." Setting up an affiliate in each of the 27 countries in which Pathfinder operates —or even in each of the 18 countries in which Pathfinder operates programs that receive no PEPFAR funds— would be extraordinarily difficult, expensive, and time-consuming.

51. In some of the countries where Pathfinder operates, it would be virtually impossible to obtain permission to set up a new affiliate, particularly one dedicated to policy advocacy or to the always controversial activity of working with sex workers, or one funded primarily with money coming from the United States.

52. Even when Pathfinder is able to obtain legal permission to operate a new affiliate, it will be difficult or impossible to obtain funding for such an affiliate. Whether Pathfinder seeks government or private funds for its initiatives, it must compete against other organizations also wishing to obtain the funding. Government and private funders alike favor organizations with a proven track record—one that has experience both doing the types of work we seek funding to do, and operating in the countries in which we propose to operate.

53. Pathfinder tends to be highly competitive in this regard because we have been operating worldwide for over half a century. We have vast experience, and are

able to describe our significant successes, in providing family planning and reproductive health services, halting the spread of HIV/AIDS, improving maternal and child health, and preventing unsafe abortions. We also have a long tenure, and extensive and close relationships, in most of the 27 countries in which we currently operate. Whether Pathfinder continues receiving Global AIDS Act funds and shifts its private funds to an affiliate, or whether Pathfinder continues using its private funds itself and shifts its Global AIDS Act funds to a new affiliate, the affiliate will lack Pathfinder's proven substantive expertise and deep ties in the 27 countries where Pathfinder operates.

54. Indeed, if Pathfinder tries to shift its Global AIDS Act funds to an affiliate so that Pathfinder can continue engaging in activities otherwise permitted by the policy requirement, that affiliate will be statutorily barred from receiving Global AIDS Act funds for at least 18 months. The Foreign Assistance Act provides that the United States' foreign assistance programs should be carried out "by such private and voluntary organizations and cooperatives as have demonstrated a capacity to undertake effective development activities." 22 U.S.C. § 2151u(a). In accordance with this statutory obligation, USAID bars non-profits from registering as private voluntary organizations (as they must do to get funded) until they have been incorporated for at least 18 months. 22 C.F.R. § 203.3(f)(4).

55. Even after the 18-month bar is over, the affiliate will continue to be at a severe competitive disadvantage in obtaining Global AIDS Act funding, because Defendants evaluate funding proposals from Pathfinder and other entities based in part on the experience possessed

by the potential recipient. USAID's own internal guidelines for grant distribution require USAID to take "past performance" into account in evaluating a funding proposal. USAID, ADS 303.3.6.3. Accordingly, every USAID application requires us to describe our past performance on other, similar projects. *See, e.g.*, USAID, Request for Applications Number USAID-Tanzania-08-001-RFA, pp. 5, 18. CDC also examines our past work.

56. So long as we are able to operate as Pathfinder, our past performance will continue to make us highly competitive. For example, in reviewing a proposal that the CDC awarded to Pathfinder in 2004 to expand home-based care for people living with HIV/AIDS in Tanzania, CDC lists as strengths Pathfinder's experience working in the country since 1995, engaging in similar work in other parts of the country, and relationships with US government partners and NGOs. CDC, Summary Statement, Program Announcement # 04208, pp. 2-5, attached as Exhibit F. CDC relied on a similar evaluation of Pathfinder's track record in awarding us a cooperative agreement to work in Botswana. CDC, Summary Statement, Program Announcement 04256, pp. 1-3 (Aug. 24, 2004), attached as Exhibit G. A new affiliate, unable to rely on this track record, will be unable to compete successfully for Defendants' funding.

57. If Pathfinder keeps its Global AIDS Act funding, its new affiliate will still be at a competitive disadvantage, this time in seeking non-U.S. government funding. Like Defendants, the private funders who underwrite Pathfinder's work do so in large part because of our proven track record. For example, in announcing a $690,000 grant to Pathfinder for a new leadership training program for individuals to help reduce maternal

mortality and morbidity and improve young people's sexual and reproductive health in Nigeria, the John D. and Catherine T. MacArthur Foundation wrote, "Pathfinder International, with its long track record in running successful training programs in the field, is well-positioned to help Nigeria build leadership to ensure this happens." See Exhibit H.

C. The Five-Factor Physical and Financial Separation Test

58. As mentioned above, because it is impossible for me to know how much weight Defendants will place on each of the five factors to be weighed in determining whether Pathfinder maintains sufficient physical and financial separation from an affiliate engaging in work otherwise barred by the policy requirement, I would need to ensure that Pathfinder maintains as much separation as possible from any such affiliate. This would impose severe burdens on Pathfinder's exercise of its First Amendment rights.

1) Separate personnel, management and governance

59. The first factor considered in assessing physical and financial separation is "the existence of separate personnel, management, and governance."

a) Separate personnel

60. The separate personnel requirement will, in some instances, make it impossible for Pathfinder to do its work and, in all instances, will make it prohibitively more expensive for Pathfinder to operate.

i. Duplicate headquarters staff

61. To understand the severe burdens the separate personnel requirement would impose on Pathfinder it is necessary to understand how Pathfinder operates. In order to coordinate its worldwide operations, reduce its worldwide overhead, and ensure that even its smallest and most remote projects are as technically proficient as possible, Pathfinder maintains personnel at its headquarters in Massachusetts who carry out the following functions for, and in coordination with, our field offices: human resources, resource development (including fundraising), accounting and other financial administration, information technology services, and substantive technical expertise. For example, our headquarters human resources staff hire senior staff for the field offices, and also any employees who are not residents of the country in which the field office is located. For small field offices, the human resources staff sometimes does all or part of local hires as well, including by reviewing resumes of local job applicants, checking references, conducting interviews, and making job offers. The human resources staff also does the following for the field offices: a) drafts job descriptions, b) conducts country-specific compensation surveys, c) puts together country-specific salary and benefits packages for senior staff and often for other staff too, d) reviews the local employment laws, e) creates country-specific employment handbooks, and f) administers benefits. When necessary, headquarters human resources staff travel to the field offices to do such tasks as recruiting, conducting job interviews, and counseling local employees.

62. Similarly, our headquarters information technology staff run a worldwide computer network in which the

field offices participate. They protect the network against spam and viruses, and do other necessary work to ensure that it runs smoothly. They also arrange for wiring in the field offices, set up computer equipment in those offices, arrange for software licenses, and do whatever trouble-shooting is necessary on an ongoing basis. When necessary, they travel to the field offices to perform these tasks.

63. Our headquarters technical services staff, which consists of highly trained professionals with expertise in the substantive work carried out by our field offices, provide substantive assistance to our field offices. For example, we employ: a) a nurse midwife who trains health care providers in our field offices about how to conduct trainings, b) monitoring and evaluations experts who help field office staff design and implement monitoring and evaluation programs to assess the success of their own projects, c) HIV/AIDS experts, and d) an adolescent reproductive health specialist.

64. Other headquarters staff review and approve all office leases, help open and monitor bank accounts, raise funds from government and private sources, and administer our contract and grant relationships with our funders, subgrantees, and suppliers.

65. By providing such extensive support to our field offices, we are able to operate high quality programs with very little overhead. This is essential to our ability to carry out our mission, because if we had to spend more of our funding on overhead we would have less available for our programmatic goals.

66. Moreover, keeping our overhead low is essential to our ongoing fundraising efforts. Fundraising is a com-

petitive business. Given a choice between an organization with high overhead and one with lower overhead, both government and private donors will choose the latter. For this reason, many potential donors ask us how we calculate our overhead, and why it is as high as it is. We hear particular concerns about high overhead from our smaller funders, who want their funding to go to achieving program goals, not to overhead.

67. Indeed, in my experience raising funds for Pathfinder, I have seen that non-profit ratings published by websites such as Charity Navigator and Charity Watch play an increasing role in our donors' funding decisions. On those websites, the percentage of budget going to overhead plays a large role in determining how a non-profit will be rated.

68. Accordingly, we have worked hard to bring our overhead down as low as possible. Approximately seven years ago, our overhead was almost 23 percent. At the time, we heard from many funders that our overhead was too high. Today, in large part because of the process efficiencies implemented at our headquarters and increased program support funds, our overhead is 13 percent. This has made it far easier for us to compete for funding.

69. One measure of this is the ratings we have received. We have received four stars—the highest possible score—from Charity Navigator, whose rating of Pathfinder is attached as Exhibit I. We have received an A+—the top rating—from the Charity Watch program run by the American Institute of Philanthropy, whose rating of Pathfinder is attached as Exhibit J. The Better Business Bureau, whose rating of Pathfinder is at-

tached as Exhibit K, has certified that we meet all 20 of its Standards for Charity Accountability. The low percent of budget we spend on overhead plays a large role in each of those designations.

70. If we had to establish a separate affiliate program, we would be faced with a terrible choice, either of which would impose enormous burdens on the organization. One option would be for us to replicate all of the functions of our headquarters in a second headquarters, leaving us with two duplicative headquarters, each of which would serve fewer (or smaller) programs. Salary costs alone would make it prohibitively expensive to operate two separate sets of headquarters staff, but there would be other costs too. For example, our headquarters staff frequently travel to the field offices to attend regional meetings of senior staff, to establish computer networks and bank accounts, to help with computer problems, employee hiring or other personnel issues, or to provide substantive technical assistance. If we had two sets of headquarters staff, each serving a separate but parallel set of field offices, we would have to pay for twice as many trips abroad by our headquarters staff, which would be extremely expensive. In these ways, the overhead costs of each organization would be significantly increased.

71. The other option would be to reduce the size of the headquarters staff for each organization, and require the field offices to take on the tasks that headquarters currently does. This, too, would increase our overhead, because we would lose the efficiencies we currently gain by centralizing so many functions. Moreover, we simply could not afford to replicate each headquarters function in each field office, and so we would have to function

without much of the expertise our field offices currently benefit from.

ii. Duplicate field offices staff

72. In addition to duplicating our headquarters staff, we would have to duplicate our field office staff. Duplicating the head of each field office (called the "country representative") would be difficult or impossible in most instances. For each country, we try to hire as our representative and senior management the people with the best experience both working in that particular country or region, and carrying out the particular types of programs that field office runs. This is the only way to make our funding applications competitive, because we must state on our funding applications who our country representative and other key people will be, and funders place great weight on their qualifications. If another organization has a country representative and other key personnel who are more experienced than ours, they are likely to be funded instead of us.

* * * * *

75. Moreover, our country representatives and other senior staff must be able to implement a program the moment it is funded, because our funders will not pay for training or start-up time. As a result, if either Pathfinder or a new affiliate were unable to use our current country representatives and senior staff, and had to hire new ones, it would be at a severe fundraising disadvantage.

76. In some of the countries in which Pathfinder operates, maintaining two sets of personnel is impossible. As a general matter, Pathfinders' field offices try to employ

residents of the country in which they operate ("local residents"), because they have greater knowledge about and contacts within their country, no visa or work permit restrictions, and are more likely to be acceptable to the local government. However, in many of the countries where we operate there is no professional level workforce from which we can hire senior managers. Consequently, many of our country representatives are either United States expatriate or third party nationals (collectively, "expatriates"). Sometimes we also have to hire expatriates to fill other senior staff or technical positions.

77. It can be extremely difficult, and is sometimes impossible, to get both a visa and a work permit for non-citizens in the countries in which we operate. In many countries, the process requires us to hire a local attorney, advertise the position locally to see if any local residents apply, and then demonstrate that none of the local applicants are qualified. This can take several months, at best. Often, we are unsuccessful. For example, last year we were unable to obtain an Indian work permit for a Bangladeshi employee with extensive expertise in working to prevent HIV/AIDS transmission among men who have sex with men—expertise we needed for that particular position. To take another example, for the past five months we have been trying, without success, to get a Tanzanian visa for one of our employees. If we had to try to get two sets of non-citizens into each country where we work, we would have to do twice the work to get visas and work permits (including paying double the attorneys' fees), and—because it would be difficult to explain why we need to bring in so many non-citizens

—would have even more difficulty getting the permissions we need.

78. Even when we are able to get permission to bring expatriates into a country, bringing them in is an expensive proposition. In order to be attractive to qualified potential applicants, we match the salary (generally in the six-figure range for our top managers) provided by the State Department in the countries in which we work. On top of the base salary, we provide a "post differential," to compensate employees serving in areas where the U.S. Department of State considers living conditions to be particularly difficult, demanding, or unhealthful. In Ethiopia, the current post differential is 30 percent of the base salary. We also provide a "danger pay allowance," to compensate employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of our employees. In Khartoum, Sudan, for example, the danger pay rate is currently 25 percent of base salary.

79. We also match the benefits packages provided by the State Department. This is an expensive package, and takes a good deal of work by headquarters staff to implement. For example, we provide non-citizens with housing. If we do not have enough information about the cost of comparable housing in that country, the employee must obtain multiple bids before entering into a lease, which can be time-consuming. Suitable housing stock is extremely limited in most of the countries in which we work, so we are forced to pay the exorbitant rents generally charged to non-nationals, which can run between $30,000 and $50,000 annually. Additionally, the shortage of suitable housing allows landlords in many

countries to require us to pay not only a security deposit, but also the first and last months rent up front. In some countries we must even pay rent in full a year or two in advance. This vastly increases the up-front cost of hiring new employees, and also increases our financial risks, because if the employee stops working for us before the end of the lease term we generally cannot recover the rent we have pre-paid.

80. We also pay for and ensure that our employees have access to electricity and other utility services in their residences. In many countries where we work, the electrical grid is unreliable, so we have to pay as much as $20,000 to purchase a generator for each residential unit.

81. Where necessary, we provide security for our staff living overseas. For example, because of the ongoing turmoil in Kenya we are currently providing 24-hour security for each employee in that country.

82. We also pay for education for the children of our expatriate employees. For older children in countries where the local education system is insufficient, we pay to send the child to a boarding school abroad. This can be extremely expensive: $48,300 per child annually for education abroad for employees based in India, and $54,950 per child annually for education abroad for employees based in Mozambique.

83. We pay for one trip home each year for all expatriate employees and their immediate family. For a family of four this can be as much as $8,000 annually. We also cover the cost of round-trip airfare for expatriates and their families in the event of serious illness or death in their immediate family.

84. Finally, we pay for our expatriate employees to move to the countries where they will be working, and then to move home again at the end of their employment. The amount varies depending on the size of the family, but can cost as much as $15,000 for each move, in addition to the airfare.

85. If we had to maintain two field offices in each country instead of one, we would need a separate expatriate country representative for each, instead of the one we currently have. We also might need duplicate expatriate senior management and technical staff. For each of these duplicate employees, we would incur all the costs outlined above.

86. In addition to duplicating expatriates, we would also have to duplicate staff who are citizens of the country in which the field office operates. In many cases, this would be difficult or impossible, because in many of the countries in which we operate there are few people with the education and experience we require. For example, we often need senior staff with experience in how to prevent the spread of HIV/AIDS among particular populations, or in non-profit or governmental capacity-building. Finding one local person with such expertise is difficult. In many instances, finding two would be next to impossible.

* * * * *

b) Separate management and governance

89. The requirement of separate management and governance would make it impossible for Pathfinder to exercise its First Amendment rights through any affiliate. Pathfinder's By-Laws, which are attached as Ex-

hibit N, vest the corporation's governance in a Board of Directors. If Pathfinder's board were unable to control the board or senior staff of an affiliate, it could not use Pathfinder's non-U.S. government funds to speak through that affiliate.

2) Separate accounts, accounting records, and timekeeping records

90. The second factor Defendants' guidelines consider in assessing physical and financial separation is "the existence of separate accounts, accounting records, and timekeeping records." In some instances, it would be simply impossible for Pathfinder to satisfy the dual accounts requirement. India, for example, exercises close controls over the bank accounts of foreign NGO's in order to control terrorism and the movement of funds across its borders. As a foreign NGO, the Foreign Contribution (Regulation) Act limits us to maintaining only one bank account that receives funds from abroad or receives U.S. currency. Foreign Contribution (Regulation) Act, § 6 (India). In order to open that account, and to add or remove signatories, we must get government permission, which can be extremely slow. It recently took us almost an entire year—and a pile of paperwork almost an inch think—to get permission to have a local Indian employee added as a signatory to an existing account. On some occasions, we have been unable to get former employees removed as signatories for months after we requested that they be removed. It would be extremely difficult and time-consuming for us to seek permission to open a second bank account for a new affiliate and there is no guarantee that we would ultimately obtain approval.

91. Even where we are able to obtain permission to open two separate accounts, doing so would be quite expensive. Pathfinder's policy is that a member of the headquarters staff should be a signatory on every bank account, in case there is a revolution or other reason for headquarters to need direct access to the account. In many countries, each potential signatory must appear in person at the bank in order to obtain permission to act as a signatory. As a result, if we had to maintain two bank accounts in each country, and if we had to have two separate headquarters employees as signatories, we would have to send each of those headquarters employees to each country, instead of sending just one.

3) Separate facilities, equipment and supplies, and extent of affiliates' restricted activities

92. The third factor Defendants' guidelines consider in assessing physical and financial separation is "the degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate." Opening a physically separate office in each country, and every part of each country, in which Pathfinder operates will be extremely difficult in some places, and impossible in others, because some of the countries in which we operate require us to obtain permission before we open a new office.

93. Additionally, opening and maintaining an office abroad is an extremely expensive proposition for Pathfinder. Having to duplicate those costs would be exorbitant. For example, our office rents are often quite expensive. Moreover, just as often we must prepay a year or two of rent on our residential leases, often we must

prepay rent on our office leases. That increases our financial risks, because if we have to close an office before the end of the lease term we lose the remainder of the rent we have prepaid.

94. In many of the countries in which we work, we must install and maintain our own telephone and internet data lines, and satellite dishes, which we would need to duplicate in a second office. We also install and maintain a computer server for each of our offices with at least six employees. For offices with more than one employee, we purchase at least two printers, and use one only for confidential financial and personnel information. We would have to duplicate all of these resources for a second country office.

95. Maintaining two offices would also require us to maintain two separate insurance policies. We operate in countries where war, civil unrest, crime, car accidents, and disease are all serious threats. We try to minimize our exposure to risk by buying extensive insurance coverage—as many as 8 to 10 different policies in some countries. Buying a second set would be extremely expensive.

96. We maintain a fleet of cars for most of our offices, because a car and a driver is a security necessity. Also for security reasons, and because of the generally poor conditions of the roads, we tend to buy four-wheel drive, all-terrain SUV's. Buying two separate fleets of cars would, consequently, be extremely expensive.

97. We must purchase generators for many of our offices, because the electrical grid is unreliable. Because our offices rely heavily on computers for communication, our power needs are extensive. Generators large

enough to meet our power needs can cost as much as $50,000.

98. The guidelines' third factor also takes into account "the extent of such restricted activities by the affiliate." I have no way of knowing how many restricted activities would be too many. But this factor seems to require that I ensure that each affiliate engage in a substantial amount of activities that are permissible under the policy requirement. Those activities could not, of course, be funded by the Global AIDS Act, because the affiliate could not receive any Global AIDS Act funding. So I would need to ensure that we have some other source of funding for those activities. In effect, this factor permits Pathfinder to use an affiliate to carry out privately funded activities otherwise barred by the policy requirement only if we have funds for those activities, *and* for a substantial number of activities that would be permissible under the policy requirement, *and* to establish and maintain a separate affiliate. This amounts to an extra, unnecessary tax on our ability to engage in constitutionally protected speech and activities with purely private funds.

99. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb. 7, 2008
Washington, District of Columbia

/s/ DANIEL E. PELLEGROM
DANIEL E. PELLEGROM

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC. AND OPEN SOCIETY INSTITUTE, PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT AND ANDREW S. NATSIOS, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, DEFENDANTS

[Aug. 24, 2005]

DECLARATION OF PEDRO CHEQUER, MD, MPH

I, PEDRO CHEQUER, declare, under penalty of perjury under the laws of the United States of America, that the following is true and correct:

1. My name is Pedro Chequer. I submit this declaration in support of the Plaintiffs' motion for a preliminary injunction.

2. I am the Co-Founder and Director of the Brazilian government's National AIDS Programme. After helping to establish the National AIDS Programme in 1987, I served as its Director from August 1996 to March 2000. I subsequently served as the representative for the Joint United Nations Programme on HIV/AIDS

("UNAIDS") in South America, Russia and Mozambique. I returned to the National AIDS Programme in August 2004, where I oversee implementation of Brazil's aggressive HIV prevention programs. I am a specialist in epidemiology, public health and sanitary dermatology.

3. Brazil's HIV prevention program is recognized as one of the most effective and multi-faceted programs in the world. We have succeeded in slowing down drastically the rate of infection of HIV/AIDS in our country. For instance, in 1992, the World Bank forecast that Brazil would witness an explosive HIV epidemic, reaching 1.2 million individuals by 2000, but the number of estimated cases in 2004 was actually around 660,000.

4. The major components of our program, many of which are carried out in partnership with civil society, include HIV/AIDS prevention, care and treatment services. Our program includes education about HIV/AIDS, wide-reaching distribution of free condoms, and the manufacture and distribution of generic versions of antiretroviral drugs, which are provided at no cost to all HIV-positive people in the country.

* * * * *

8. Although the United State Agency for International Development ("USAID") offered more than $40 million to continue funding HIV/AIDS prevention efforts in Brazil through 2008, the National AIDS Programme, which acts as the central coordinator of all HIV/AIDS prevention efforts by government and NGOs, decided to reject the funds earlier this year. The decision of the National AIDS Programme was approved by the National AIDS Commission, a body composed of representatives of civil society and eight governmental minis-

tries. After careful consideration, we decided that it would be harmful to our program to have to oppose prostitution in order to comply with the requirements of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (the "Global AIDS Act"), as implemented by USAID. In particular, we believed that we could not conduct effective outreach to and programs with sex workers if our NGO partners were forced to state their explicit opposition to prostitution, as USAID was requiring. Because we did not believe that we could carry on with our successful program consistently with the requirements under the Global AIDS Act as implemented by USAID, we chose to decline the substantial amount of aid that would have come into the country from USAID.

9. This was a difficult decision, because the National AIDS Programme never has enough funding to do all of the important work we need to do. Until this year, the money from USAID that supported our AIDS program played an important role in preventing the transmission of HIV among people at high risk for being infected.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Aug. 24, 2005
Brasilia, Brazil

/s/ PEDRO CHEQUER
PEDRO CHEQUER

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05-CV-8209 (VM) (DF)
ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC. ET AL., PLAINTIFFS

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ET AL., DEFENDANTS

[Feb. 5, 2008]

DECLARATION OF MARK SIDEL

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1. This Declaration addresses the legal and practical difficulties of establishing, registering, and operating new nonprofit organizations overseas, in light of the guidelines issued by the government (U.S. Agency for International Development and Department of Health and Human Services) under the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (the "Guidelines"). The Guidelines prohibit grant recipients to from engaging in protected expression unless they do so through newly created, privately funded

separate organizations that would not be required to follow the Act's policy requirement.[1]

2. The Guidelines do not allow American charitable organizations working abroad adequate alternative channels for protected expression because it is simply too burdensome for non-profit organizations to create, establish, register, and operate new such organizations everywhere they work overseas.

3. In particular, the extraordinarily stringent requirements for organizational separation and independence—mandating "legally separate entit[ies]," that are completely "physically and financially separate," judged on factors that include "the existence of separate personnel, management, and governance," "the existence of separate accounts, accounting records, and timekeeping records,"[2] and separate signage and identification, are exceptionally burdensome for the Plaintiffs and for other American charitable and nonprofit organizations seeking to provide critical relief and development services that literally keep people alive in some of the world's most challenging countries.

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[1] *See* Acquisition & Assistance Policy Directive (AAPD) 05-04 Amendment I, Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003—Eligibility Limitation on the Use of Fund and Opposition to Prostitution and Sex Trafficking, issued July 23, 2007 (U.S. AID Guidelines); Guidance issued by the Office of Global Health Affairs, Department of Health and Human Services, implementing Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, issued July 23, 2007.

[2] *Id.* This wording appears in both the U.S. AID and Department of Health and Human Services guidance.

4. This Declaration addresses whether, and the extent to which, the Guidelines impose burdens on the establishment of affiliates in all of the countries in which these organizations operate, whether with US or private funds. By way of example, this Declaration establishes and details the legal and practical burdens in registering a new and separate nonprofit in five of the countries where Pathfinder International and CARE, which are members of InterAction and Global Health Council, operate outside the United States: India, Bangladesh, Mozambique, Ethiopia, and Peru.

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II. The Guidelines Impose Substantial Burdens on the Establishment and Operations of U.S.-based Nonprofit Organizations that Operate Abroad

11. The burdens of providing humanitarian assistance in most of the countries in which the members of InterAction and Global Health Council (collectively "members") operate become exceptionally burdensome when they must be shouldered twice, for new and separate organizations. In virtually every country abroad, including those in which the members operate, those burdens include those described below.

A. Burdens of Registering a New, Legally Separate Entity in Multiple Countries

12. The Guidelines would impose significant, often exceptional difficulties in securing permission to register and operate a new nonprofit entity in a foreign country. These difficulties are substantially exacerbated by the fact that organizations will have to explain to local government authorities (often multiple authorities, and at

different levels) why a second, separate and new registration for another entity is necessary.

13. In many countries in which the members operate, for example, approval and registration of a new and separate foreign affiliated organization is a long, cumbersome and exceptionally difficult procedure, involving substantial costs. It will be even longer, more cumbersome and difficult where it involves the second, new, and separate organization related to an American charitable organization and where the American parent must shoulder the additional burden of explaining to the foreign government why this arrangement is necessary. In some countries, government agencies responsible for approval and registration of foreign charities or their local counterparts may only allow each organization to have one address, or only to work in defined, preapproved areas of the country. As the International Center for Not-for-Profit Law (ICNL) has noted, there is currently "a regulatory backlash against NGOs that has caused growing concern among commentators and practitioners throughout the world. In the past 2 years alone, more than twenty countries have introduced restrictive regulations aimed at undermining civil society. These countries join scores of others with existing laws, policies, and practices that stifle the work of civil society organizations."[5]

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[5] David Moore, *Safeguarding Civil Society in Politically Complex Environments*, 9:3 *International Journal of Not-for-Profit Law* (July 2007), at www.ijnl.org. On the government-caused problems of registration in a disaster-ridden nation, see also International Federation of Red Cross and Red Crescent Societies (IFRC), *Law and Legal Issues in International Disaster Response: A Desk Study* (2007), at 13.

B. Difficulties Securing Visas and Work Permits for Foreign Employees Of New Entity

14. Members will face difficulties securing visas and/or work permits for American or other foreign employees of the new entity, difficulties exacerbated because many countries may not issue visas or work permits for additional foreign personnel in a new and separate entity—and where the government Guidelines appear clearly to prohibit the "dual use" of personnel across both affiliates.

15. As the International Red Cross has found, governments frequently limit the number of visas and/or work permits that can be given to foreign nongovernmental organizations, impose substantial waiting times or approval procedures, and require that the organizations to whom such foreign individuals will be assigned be fully registered and approved. In fact, some 77% of international humanitarian organizations responding to an International Red Cross survey reported significant difficulties in this area.[6] All of these processes would become considerably more difficult and complex under the Guidelines.

C. Expenses of Paying for Separate Office Space, Staff, and Equipment

16. Members will face expenses—sometimes exorbitant expenses—of paying for new and separate office space, local staff, foreign staff, necessary vehicles (in-

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[6] *See* International Federation of Red Cross and Red Crescent Societies (IFRC), *Law and Legal Issues in International Disaster Response: A Desk Study* (2007), Sec. 10.1, p. 116, at http://www.reliefweb.int, (attached in relevant portion as Exhibit C hereto).

cluding customs and tax costs as well as vehicle costs),[7] office equipment, security, telephone and Internet access, and other services.[8] These expenses would be exacerbated because, according to the Guidelines, they cannot be shared by the organizations, which must remain separate in all ways.

D. Problems Opening Bank Accounts

17. Members will face particular problems associated with opening bank accounts by nonprofit and nongovernmental organizations in many countries. Banks may require evidence of registration with and approval by the government, and national laws or regulations may limit the number of bank accounts or even prohibit multiple accounts per organization, per donor, or per project (as has been the case in India under the Foreign Contribution (Regulation) Act).[9] These already complex and difficult provisions would be exacerbated by implementation of the Guidelines.

E. Tax Burdens

18. The procedural tax burdens on branches, affiliates or grantees of American charitable organizations in developing countries are already burdensome, and the ad-

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[7] For example, the same International Red Cross study cited above noted that 40% of international humanitarian organization headquarters reported that customs problems with importing telecommunications equipment were "always or frequently present." *Id.* at 199.

[8] In yet another example, the Red Cross study found that 85% of international humanitarian organization headquarters reported barriers to hiring local staff. *Id.* at 120.

[9] The International Red Cross also reported that 85% of international humanitarian organization headquarters had difficulties in opening bank accounts in the countries where they work. *Id.* at 126.

dition of a requirement for new and separate organizations is likely to significantly confuse the issues of tax exemption and tax deductibility for domestic affiliates, and to re-raise with government officials the question of the tax treatment of organizations related to American charities and nongovernmental organizations, resulting in substantial additional burdens. In certain cases, national governments may even question whether existing organizations, operating on a tax exempt basis, should be re-classified or reexamined, causing exceptional burdens not only for the new and separate affiliate but potentially for the existing organization as well.[10]

F. Additional Political and Security Suspicion of New and Separate Establishments in Foreign Jurisdictions

19. Members will face substantial risk of significantly enhanced suspicion by government, security, intelligence and police authorities in countries concerned that new and separate organizations are being created in order to evade tax, customs, or other government regulations. In a number of countries, government authorities, service providers, the media and other institutions are likely to believe that new and separate groups are being established in order to separate grantmaking and programs from advocacy, and thus to substantially increase advocacy activities, support for dissidents, and other activities that may be highly unpopular to government authorities.

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[10] For examples of the significant tax burdens and difficulties that can be encountered, see the International Red Cross study, *id.* at secs. 12.1, 12.3, pp. 125-29.

20. Such "doubling up" would also cause, in many countries, increased foreign country intelligence targeting of the American organizations, and increased suspicion in some countries that the new and separate groups are being formed to engage in destabilizing activities or activities in support of armed or other dissidents.

G. Fundraising Difficulties

21. The Guidelines will also make it more difficult—perhaps considerably more difficult—for institutions to raise funds for two reasons.

22. First, in a highly competitive fundraising environment, the newly-formed separate organizations would have no track record of accomplishment on the ground on which to raise funds. Because of the exceptionally detailed separation requirement, the new and separate affiliates are unlikely to be able to rely on the track record in effective work on the ground established by the already-existing organization.

23. Second, the increased administrative costs incurred from dividing the work that a member does in dozens of countries into new and separate organizations would likely downgrade a member's ranking by independent certification organizations that rank charitable organizations.

24. In response to concerns about effectiveness and efficiency in the American charitable sector, a number of rating and ranking organizations evaluate non-profit administrative costs and the ratio of administrative to program costs. This burgeoning sector includes the Better Business Bureau Wise Giving Alliance (www.give.org), Charity Navigator (www.charitynavigator.org), Guidestar (www.guidestar.org), Charity Watch (Ameri-

can Institute of Philanthropy) (www.charitywatch.org), and others.

25. Less favorable rankings or ratings, in turn, can have a distinctly negative impact on the ability of organizations to raise funds from the public. They may even impact the ability to obtain funds from the government. In my own experience as a grantmaker with a major private foundation, and as a consultant to other foundations and scholar of philanthropy as documented earlier in this Declaration, I am of the opinion that the requirements of the Guidelines and the implications of those requirements for administrative expenses, ratings and related issues would negatively impact fundraising by affected institutions.

H. All of These Factors Impose Substantial Burdens on Members' Operations in the United States

26. The cumulative effect of these burdens in multiple countries is likely to be very substantial. But beyond the burdens on the new and existing related organizations in many developing countries, the various burdens, in dozens of countries, will in turn cause substantial burdens for the home offices of American charitable institutions, adding substantial administrative costs that neither government funding nor private donors are likely to cover because these expenses do not contribute directly to the resolution of hunger, poverty, illness and other problems in developing countries, but must be managed solely in response to the government's Guidelines.

III. Examples of the Burdens the Guidelines Impose in Five Key Identified Countries in Which Plaintiffs are Active

A. India

27. Requiring American charitable organizations to establish new and separate affiliates in India, in addition to the operations that they have established through long and assiduous effort, is likely to be exceptionally burdensome and result in long delays, expensive processes, and government refusal to allow the registration and establishment of new and separate organizations.

28. The process for registering and establishing Indian affiliates of foreign charitable organizations, or foreign branches of charitable organizations, in India is already exceptionally complex and cumbersome, beginning with a difficult choice between registering and establishing as a society, trust, company or in some other form.

29. Registration and establishment in India takes months or years of application and seeking government approval, including consideration of the activities that the organization will carry out, examination of the proposed board, and other procedures. For foreign organizations establishing affiliated organizations in India, these processes are complicated by the required clearances that must be obtained from the Indian Intelligence Bureau (IB), Ministry of Foreign Affairs, and other government authorities.

30. Beyond the complexities and cumbersome process, it is possible or even likely that the Indian authorities, concerned with tracking and understanding the activities of foreign charitable and nonprofit affiliates in In-

dia, will merely refuse to allow the registration and establishment of parallel organizations. Such refusals are likely to take place on an organizational basis, and it would be in keeping with past Indian government practice for the government to make such decisions based in part on the advocacy activities of specific organizations.

31. Visas for foreign personnel are always complex and time-consuming to obtain. The government often imposes limits on the number of foreign personnel that can be employed by the affiliate of a foreign charitable organization, and it may well be impossible to convince the government to loosen that limit for new and separate affiliates of American charitable organizations.

32. The burdens of operations are particularly problematic in India. Affiliates and branches of foreign charitable and nonprofit organizations must engage in the highly cumbersome and time-consuming process of obtaining government authorization for duty-free import of vehicles and office equipment (because the government may not permit duty-free purchase of existing goods held by other charities in the country), and it may well be very difficult to obtain those permissions for two affiliates of the same foreign organization. Securing appropriate office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate affiliates of the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.

33. There are other restrictions at work as well. The U.S. State Department noted in the most recent (March 2007) Country Reports on Human Rights Practices that

"NGOs must secure approval from the Ministry of Home Affairs before organizing international conferences. Human rights groups contended that this provided the government with substantial political control over the work of NGOs and restricted their freedom of assembly and association. NGOs alleged that some members from abroad were denied visas arbitrarily."[11] In addition, "[s]ome domestic NGOs and human rights organizations faced intimidation and harassment by local authorities."[12]

34. There is a long history of government suspicion of the foreign charitable sector in India, documented by the U.S. Department of State as recently as March 2007 in the most recent annual Country Reports on Human Rights Practices.[13] These historical influences increase the burdens on organizations establishing new and separate organizations, for the Indian government authorities at central and state levels will be suspicious that the new organization is being established to evade tax or customs requirements, or to engage in advocacy or political activities. The government ministries most likely to hold and act on these suspicions include the Ministry of

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[11] *See* the India Section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm

[12] *Id.*

[13] For extensive information on suspicion of foreign religious and human rights organizations in India, for example, see the India section of the U.S. Department of State, Country Reports on Human Rights Practices (2006), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

Home Affairs, the Intelligence Bureau, and the Ministry of Finance.[14]

35. The establishment of new and separate affiliates of American charitable organizations in India would also almost certainly cause havoc and long delays in the receipt of funds from abroad for charitable work in India. This is because India has a long-standing and strictly applied process by which Indian nonprofits and charitable affiliates can receive and use foreign charitable donations, known in India as foreign contributions. The strict Foreign Contribution (Regulation) Act (FCRA) (attached as Exhibit C hereto), first adopted during the Indian Emergency in the mid-1970s, governs the receipt and use of foreign donations and requires organizations based in India to apply for approval as a foreign donation-receiving entity or to apply for special permission to receive funds on a one time basis.

36. Each of these alternatives—approval of organizations to receive foreign charitable donations, or approval of donations on a one-time basis—is exceptionally difficult and cumbersome. Indian government authorities—particularly the Ministry of Home Affairs, which administers the FCRA system, and the Intelligence Bureau, which conducts FCRA-related investigations of charitable and nonprofit organizations for the Indian government—remain suspicious that foreign charitable funds will be used for destabilizing religious, political, corrupt or other purposes in India. The U.S. State Department

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[14] The U.S. Department of State has extensively tracked and documented these issues. *See*, e.g. the India section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), as www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

has noted multiple instances in which these suspicions have resulted in denials of approval for foreign charitable funds to be used in India.[15]

37. In addition, as the most recent State Department country report on human rights in India points out, "[i]n February [2006], the Ministry of Home Affairs barred 8,673 organizations from seeking foreign funds under the Foreign Contribution and Regulation Act (FCRA), reportedly for failing to provide the proper paperwork. Under the ruling, these organizations need government approval before seeking aid from abroad. NGOs called the FCRA flawed and extremely restrictive and claimed that the government failed to notify organizations when the requisite paperwork was needed. Some human rights groups contended that FCRA was a means of intimidation and substantial political control by the government over the work of NGOs. NGOs expressed concern that the Home Ministry, which is normally not responsible for financial matters, was tasked with monitoring the finances of NGOs. The act has a clause that states the NGOs must also secure approval from the government before organizing international conferences, and some NGOs alleged that the government has denied visas to prevent members from holding confer-

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[15] *See* the India Section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm. I have discussed this problem in India (as well as in Bangladesh) extensively in Sidel, *Courts, States, Markets and the Nonprofit Sector: Judiciaries and the Struggle for Capital in Comparative Perspective*, 78 *Tulane Law Review* 1611 (2004).

ences paid for with foreign funds."[16] The State Department report also pointed out that "[i]nternational human rights organizations were restricted, and foreign human rights monitors historically have had difficulty obtaining visas to visit the country for investigative purpose."[17]

B. Bangladesh

38. Requiring American charitable and nonprofit organizations to establish new and separate organizations in Bangladesh, under a system in which even the normal, seemingly uncontroversial establishment of a single charitable affiliate can cause enormous burdens and delays, is likely to be exceptionally burdensome and to result in long delays, expensive processes, and even government refusal to allow the registration and establishment of the new and separate organizations.

39. American charitable organizations have spent decades negotiating the byzantine and conflict-filled processes of government regulation of the foreign charitable sector in Bangladesh, and remain concerned that a conflict-ridden, often violent political culture marked by an impasse between two powerful political parties and military rulers will result in further erosion of the work that charitable organizations can do in Bangladesh.[18]

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[16] *See* the India section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78871.htm.

[17] *Id.*

[18] *See, e.g.*, the discussion of charitable activities and dangers in *Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka* (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org). *See also* The World Bank, *Economics and Governance of Nongovern-*

Under these tenuous and difficult circumstances, where "the relationship between nonprofits and the government has nearly always been characterized by tension and mistrust,"[19] requiring that American charities establish parallel organizations in Bangladesh is likely to prove exceptionally burdensome.

40. Registration and establishment in Bangladesh, as in India, takes months or years of application and seeking government approval, including consideration of the activities that the organization will carry out, examination of the proposed board, and other procedures. For foreign organizations establishing groups in Bangladesh, these processes are complicated by the required clearances that must be obtained from multiple government agencies, including the bureaucratic and politically driven NGO Affairs Bureau (NGOAB) and other government institutions. A report funded partly by U.S. AID found that "delays by NGOAB are frequent and often prolonged . . . NGOAB lacks capacity in the most fundamental aspects of its ability to perform its functions."[20]

41. Beyond the complexities and cumbersome process, it is likely that the Bangladesh authorities, as in India, concerned with tracking and understanding the activities of foreign charitable and nonprofit organizations, will merely refuse to allow the registration and estab-

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mental Organizations in Bangladesh (World Bank, April 2006, at www.worldbank.org.bd).

[19] *Philanthropy and Law in South Asia, supra* note 21, p. 5.

[20] Leon Irish, Karla Simon, and Fawzia Karim Feroze, *Legal and Regulatory Environment for NGOs in Bangladesh* (17 April 2005), funded by NORAD, SIDA, and U.S. AID and contracted by UNDP, at http://www.iccsl.org/pubs/bangladeshfinalreportmayl5.pdf, p. 10.

lishment of parallel organizations. Such refusals are likely to take place on an organizational basis, and it would be in keeping with past Bangladeshi government practice for the government to make such decisions based in part on the advocacy activities of specific organizations. A 2005 report partly funded by U.S. AID commented on the "much bad will and suspicion . . . between the NGOs and the GOB [Government of Bangladesh]."[21]

42. The U.S. State Department, in its most recent report (March 2007) on human rights practice in Bangladesh, noted that "[t]here were many examples of harassment [of foreign and domestic NGOs] by the [Bangladeshi] intelligence agencies.[22] "In September [2006], according to local human rights organizations, in anticipation of opposition protests in Dhaka, the government indiscriminately arrested hundreds of persons, including opposition activists and NGO supporters, on old cases or false charges such as theft. Most detainees were released within a few days. . . . In mid-September police throughout the country arrested 172 workers at different offices of the NGO Proshika, according to press reports."[23]

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[21] *Id.*, p. 19.

[22] *See* the Bangladesh section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78869.htm.

[23] *Id.* The State Department also reported that "No action was taken nor charges filed related to the July 2005 deaths of two employees of the Christian Life Bangladesh NGO who were allegedly killed because they showed an evangelical film. Police initially arrested several suspects for the killing, but they were later released, and no charges had been filed at year's end."

43. Visas for foreign personnel are usually complex and time-consuming to obtain, as the U.S. Department of State has documented with respect to foreign religious personnel in Bangladesh as recently as March 2007.[24] The government often imposes limits on the number of foreign personnel that can be employed by an organization related to a foreign charitable organization, and it may well be impossible to convince the government to loosen that limit for new and separate affiliates of American charitable organizations.

44. The burdens of operations are particularly problematic in Bangladesh. Affiliates of foreign charitable and nonprofit organizations must often engage in a highly cumbersome and time-consuming process of obtaining government authorization for duty-free import of vehicles and office equipment (since the government may not permit foreign charities or their local affiliates to purchase existing, in-country goods on a duty-free basis), and it may well be very difficult to obtain those permissions for two groups related to the same foreign organization. Securing appropriate office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate affiliates of the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.

45. Given the already heightened suspicions of the Bangladeshi authorities toward foreign charitable and nonprofit organizations, the authorities in Dhaka, like those in India, are likely to be highly suspicious that at-

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[24] *Id.*

tempts to establish parallel groups in Bangladesh are being undertaken to evade tax or customs requirements, or to engage in advocacy or political activities. The government bodies most likely to hold and act on these suspicions are the NGO Affairs Bureau, Ministry of Home Affairs, and ministries and agencies concerned with security and intelligence.[25]

46. As in India, the establishment of new and separate related organizations of American charitable organizations in Bangladesh would also almost certainly cause havoc and long delays in the receipt of funds from abroad for charitable work in Bangladesh. Bangladesh has a regulated system for approval of receipt and use of foreign charitable donations by Bangladeshi affiliates of foreign charities, and a separate system of approval of the activities of foreign charitable and nonprofit organizations working directly in Bangladesh.

47. The Foreign Donation (Voluntary Activities) Regulation Act 1978, revised in 1982 (attached hereto as Exhibit D), provides the legislative framework for this intensive regulation. The Act has been used to deny release of foreign donated funds to Bangladeshi NGOs allegedly because they were "involved in political activities" among other alleged transgressions, according to the government of Bangladesh.[26] Recently, the government has proposed strengthening and tightening the Act

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[25] *See* the Bangladesh section of the U.S. Department of State, *Country Reports on Human Rights Practices 2006* (issued March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78869.htm, for further information on suspicion of foreign NGOs.

[26] PRIP Trust Signs Undertaking to Get Back Fund, *New Age* (Dhaka), April 25, 2005, at http://www.newagebd.com/2005/apr/25/front.html.

on several occasions. To cite but one example, the government proposed prohibiting "political activity" by nonprofits, defined so broadly that advocacy activities by charitable organizations could well be included if government authorities disapproved of such activities.[27]

48. Bangladeshi government authorities remain suspicious that foreign charitable funds will be used for destabilizing religious, political, corrupt or other purposes in Bangladesh.

C. Mozambique

49. In Mozambique, requiring American charitable organizations to establish new and separate organizations for work there would be a highly burdensome task. The situation for American charitable organizations seeking to register and work in Mozambique is already very difficult. As the U.S. State Department recently reported, "[a] government decree regulates the registration and activities of foreign NGOs. Nonpolitical foreign NGOs and religious groups must register with the Ministry of Foreign Affairs and Cooperation and are required to provide significant details on their organization's projects, staffing, and finances. . . . The registration process for foreign NGOs and religious groups reportedly involved significant discretion on the part of government officials and regularly took several months."[28]

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[27] *Philanthropy and Law in South Asia: Recent Developments in Bangladesh, India, Nepal, Pakistan, and Sri Lanka* (Asia Pacific Philanthropy Consortium, 2007, www.asianphilanthropy.org), pp. 5-7.

[28] U.S. Department of State, *Country Reports on Human Rights Practices 2006* (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78748.htm.

50. Human Rights Watch has documented that authorization under this decree, Decree 55/98 (attached hereto as Exhibit E), "is provided to NGOs whose activities conform with the Government program. . . . The Ministry issues two-year renewable permits to those NGOs who are authorized to register."[29] Under these difficult circumstances—where registration and establishment of a single foreign charitable office is risky and complex at best—expecting and requiring foreign charitable organizations to establish new and separate organizations in Mozambique under Mozambican law would be exceptionally difficult to well-nigh impossible.

51. Beyond the complexities and cumbersome process, it is likely that the Mozambican authorities concerned with tracking and understanding the activities of foreign charitable and nonprofit groups, will, at least in some cases, merely refuse to allow the registration and establishment of parallel organizations. Such refusals are likely to take place on an organizational basis, perhaps penalizing those charitable organizations more involved with advocacy activities that challenge the government.

52. Permission to work and visas for foreign personnel are complex and time-consuming to obtain. As Human Rights Watch has reported, "Foreign employees working for foreign NGOs must conform with the Labor Law, Decree 8/98 [attached in relevant part hereto as Exhibit F]. *Inter alia*, the partner organization and the foreign NGO must verify that no Mozambican has the necessary qualifications before an expatriate may be

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[29] Human Rights Watch, *NGO Laws: Malawi, Mozambique, Namibia, South Africa and Tanzania*, at http://hrw.org/backgrounder/africa/zimbabwe/2004/12/6.htm.

hired. . . ."[30] Under these already difficult circumstances it may be difficult or impossible to convince the government to loosen those limits for new and separate affiliates of American charitable organizations.

53. The burdens of operations are particularly problematic in Mozambique. Securing appropriate clearances for import of vehicles and office equipment, and securing office space, telephone and Internet access and other necessary services can take months or longer. Accomplishing these tasks twice, for separate groups related to the same American organization, is likely to be exceptionally difficult and spark suspicion that cheating, fraud, illicit or anti-government activities are at work.[31]

54. Given the already heightened suspicions of the Mozambican authorities toward foreign charitable and nonprofit organizations, the authorities in Maputo are likely to be highly suspicious that attempts to establish parallel related organizations in Mozambique are being undertaken to evade tax or customs requirements, to engage in advocacy or political activities. The government agencies most likely to hold and perhaps act on these suspicions include the Ministry of Interior, Ministry of Planning and Finance, Ministry of Foreign Affairs

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[30] Human Rights Watch, *NGO Laws: Malawi, Mozambique, Namibia, South Africa and Tanzania*, at http://hrw.org/backgrounder/africa/zimbabwe/2004/12/6.htm.

[31] For multiple examples of these difficulties in Mozambique in the customs and import context as recently as 2007, see International Federation of Red Cross and Red Crescent Societies (IFRC), *Law and Legal Issues in International Disaster Response: A Desk Study* (2007), at 99, 100, 109, 112 (attached in relevant part as Exhibit B hereto).

and Cooperation, and government bodies responsible for security and intelligence.

55. The establishment of new and separate related organizations of American charitable organizations in Mozambique would also almost certainly cause significant problems and long delays in the receipt of funds from abroad for charitable work in Mozambique.

56. For each of these reasons, requiring American charitable and nonprofit organizations to establish new and separate groups in Mozambique, under a system in which even the normal, seemingly uncontroversial establishment of a single charitable affiliate can cause enormous burdens and delays, is likely to be exceptionally burdensome to the American organizations.

D. Ethiopia

57. The situation for American charitable organizations seeking to register and work in Ethiopia is already very difficult, as it is for Ethiopian organizations seeking to carry out autonomous civil society activities. The U.S. State Department has reported in recent years on government "limitations on freedom of association."[32] In such an environment, requiring American organizations to entirely double their establishment and registration activities would be both very difficult and makes no sense, mandating significant new establishment, registration and operating expenses while causing govern-

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[32] See the Ethiopia report in U.S. Department of State, *Country Reports on Human Rights Practices 2005* (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm; U.S. Department of State, *Country Reports on Human Rights Practices 2006* (March 2007), www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

ment suspicions of the motivations behind dual organizational arrangements.

58. Since the Ethiopian elections in 2005, the Ethiopian civil society and nongovernmental sector has been "fragmented and weakened."[33] In recent years, the U.S. State Department as well as reputed American and international organizations such as Freedom House (U.S.), the Christian Relief and Development Agency (CRDA) and the International Center for Not-for-Profit Law (U.S.), have reported increasing interference with the registration of charitable and nonprofit organizations.

59. The International Center for Not-for-Profit Law reports, for example, that in Ethiopia, "regulations governing the registration process are vague and leave great discretion to the registration officials. As a result, CSOs [civil society organizations] have difficulty registering—they are sometimes denied registration and other times experience long delays or repeated requests for information."[34] The Christian Research and Development Agency (CRDA), an international aid agency working actively in Ethiopia, reported in a lengthy study of the operating environment for nonprofit and charitable organizations in Ethiopia that the "registration pro-

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[33] Christian Relief and Development Agency, *Assessment of the Operating Environment for CSO/NGOs in Ethiopia* (December 2006), at www.crdaethiopia.org, p. 14.

[34] International Center for Not-for-Profit Law, Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations, 8:4 *International Journal of Not-for-Profit Law* (August 2006), at www.ijnl.org.

cess [is] onerous, subjective and open for abuse and provides ample room for denial of registration."[35]

60. The problems, in fact, well exceed registration. The Christian Relief and Development Association reported as recently as December 2006, for example, that "[i]n Ethiopia . . . the mandate of the government . . . has gone beyond registration as far as closing down organizations, dictating what goes or does not go into an organization's Memo of Association . . . thus contravening the very principle of 'freedom of associational life'. There is also concern that . . . NGOs/CSOs will soon have to first present project documents from regions prior to seeking basic agreements. . . . In other words, Government now wants to know what precisely NGOs/CSOs want to do before providing legal certificates. Furthermore, there was strong feeling that the government is monitoring the 'political' actions of NGOs /CSOs."[36]

61. The U.S. State Department has also reported on restrictions on foreign NGO electoral observers, domestic human rights organizations, and foreign religious workers, among other groups. The State Department states: "The government generally was distrustful and wary of domestic human rights groups and some international observers. After the November [2005] protests the government restricted human rights groups from visiting or investigating detention camps. In April

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[35] Christian Relief and Development Agency, *Assessment of the Operating Environment for CSO/NGOs in Ethiopia* (December 2006), at www.crdaethiopia.org, p. 14.

[36] Christian Relief and Development Agency, *Assessment of the Operating Environment for CSO/NGOs in Ethiopia* (December 2006), at www.crdaethiopia.org, p. 12.

[2005] the government expelled representatives of several foreign-based NGOs conducting electoral work."[37] The situation remained problematic when the most recent State Department human rights report on Ethiopia was issued in March 2007: "The government generally was distrustful and wary of domestic human rights groups and some international observers. NGOs continued to complain of restrictions on their importation of published materials and complained that they were prevented from bringing foreigner visitors into the country."[38] In both 2006 and 2007, the State Department reported that the Ethiopian government also restricted visas for foreign religious organizations.[39]

62. Representatives of foreign charitable organizations have been caught up in the government's repression of the charitable and nonprofit sector. In 2007, for example, the director of the policy department at ActionAid International Ethiopia, the Ethiopian branch of the major international charitable agency ActionAid was put on trial for treason in Addis Ababa, along with another defendant who headed the Organization for Social Justice in Ethiopia, which had conducted election monitoring. The arrests of these nonprofit personnel

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[37] *See* the Ethiopia report in U.S. Department of State, *Country Reports on Human Rights Practices 2005* (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm.

[38] *See* the Ethiopia report in U.S. Department of State, *Country Reports on Human Rights Practices 2006* (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

[39] *See* the Ethiopia report in U.S. Department of State, *Country Reports on Human Rights Practices 2005* (March 2006), at www.state.gov/g/drl/rls/hrrpt/2005/61569.htm; U.S. Department of State, *Country Reports on Human Rights Practices 2006* (March 2007), at www.state.gov/g/drl/rls/hrrpt/2006/78734.htm.

and over 120 others had earlier prompted international donors, including the World Bank and the European Union, to threaten to withhold $375 million in desperately needed foreign aid for Ethiopia.[40]

63. Under these circumstances in which the charitable, nonprofit and civil society sector already faces substantial pressure in a country in which the effective and efficient provision of aid is critical, requiring American charitable organizations to establish new and separate organizations would be a highly burdensome and entirely counter-productive task. The creation of such related organizations would mandate significant new establishment, registration and operating expenses while causing government suspicions of the motivations behind dual organizational arrangements, and siphoning urgently needed resources away from addressing Ethiopia's immense problems of poverty, food insecurity, and conflict.

E. Peru

64. In Peru, requiring American charitable organizations to establish new and separate organizations would be a highly burdensome task in a situation where the charitable and nonprofit sector is already under significant pressure.

65. Freedom House reported in 2007 that "[c]ooperation between the state and NGOs has diminished significantly under the [current] government, which is perceived as wary of NGO motivations. Given the lack of a coherent opposition in congress, NGOs are seen by the government almost as opposition political parties. This

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[40] International Center for Civil Society Law Newsletter, January 2006 and July 2007, at www.iccsl.org.

puts them in a difficult position: the more vigorously they oppose government actions, the more the government view that they are political entities is validated."[41]

66. These suspicions and harassment took a more ominous form in December 2006, when "final amendments were passed to a new law that imposed new registration rules on all NGOs operating in the country. The law [Ley No. 28875] . . . requires that all NGOs register with [the Peruvian Agency for International Cooperation] and divulge details of the provenance and intended use of all donated funds. For money channeled through [the Agency], the agency—which as an arm of the foreign affairs ministry is an executive branch institution—will have the ability to "prioritize" spending in line with national development goals, as well as impose sanctions on organizations that are deemed noncompliant with the new regulations."[42] This new law was perceived as a direct threat by the Peruvian nonprofit and charitable sector.[43]

67. In such an environment, requiring American organizations to entirely double their establishment and registration activities would be both very difficult and makes no sense, mandating significant new establishment, registration and operating expenses while causing government suspicions of the motivations behind dual organizational arrangements, and siphoning urgently

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[41] Freedom House, *Countries at the Crossroads 2007* (Peru), at www.freedomhouse.org.

[42] *Id.*

[43] *Id.* The law was challenged before the Peruvian Constitutional Court, which held parts of it unconstitutional on August 29, 2007. International Center for Civil Society Law Newsletter, October 2007, at www.iccsl.org.

needed resources away from addressing Peru's continuing issues of poverty, food insecurity, and conflict.

IV. Conclusion

68. In summary, the government's Guidelines impose very substantial burdens on American charitable organizations working abroad in each of these areas. The Guidelines do not allow American charitable organizations working abroad adequate alternative channels for protected expression because it is simply too burdensome for non-profit organizations to create, establish, register, and operate new related entities everywhere they work overseas.

Executed on Feb. 5, 2008
Iowa City, Iowa

/s/ MARK SIDEL
MARK SIDEL

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